(6)

No. 00-1831

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

SANDRA L. CRAFT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED: JUNE 8, 2001
CERTIORARI GRANTED: SEPT. 25, 2001

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

Docket No. 93-CV-30638

SANDRA L. CRAFT, PLAINTIFFS

v.

UNITED STATES OF AMERICA,
DEFENDANTS

RELEVANT DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
4/23/93	1	COMPLAINT TO QUIET TITLE (38 pgs) filed w/exhibits A-L [Entry date 4/26/93]
4/23/93	–	FILING FEE PAID on 4/23/93 in the amount of $120.00 (Receipt #024272) [Entry date 04/26/93]
4/23/93	–	SUMMONS issued as to deft IRS and returned to pltf's rep. [Entry date 4/26/93]

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
4/28/93	4	SUMMONS AND RETURN OF SERVICE executed personally upon defendant IRS via deft's counsel, Terry Zabel, on 4/27/93
		* * * * *
7/15/93	7	ANSWER to complaint by defendant IRS [Entry date 7/16/93]
		* * * * *
9/10/93	12	MOTION by plaintiff Sandra L. Craft for summary judgment; O/A requested w/brief in support and proof of service [Entry date 09/14/93]
9/13/93	13	MOTION by defendant IRS for summary judgment w/brief in support, attached exhibits and proof of service [Entry date 09/14/93]

DATE	DOCKET NUMBER	PROCEEDINGS
10/5/93	14	RESPONSE IN OPPOSITION by defendant IRS to pltf's motion for summary judgment [12-1] w/proof of service [Entry date 10/06/93]
10/12/93	15	NOTICE of hearing re Cross-motions for summary judgment [12-1] & [13-1]; O/A scheduled for hearing on 10/22/93 at 9:30 is adjourned w/out date; briefing ddls have been extended by two weeks (cc: all counsel) [Entry date 10/13/93]
10/22/93	16	RESPONSE BRIEF IN OPPOSITION by plaintiff Sandra L. Craft to the United States' motion for partial summary judgment [13-1] w/exhibit 1 [Entry date 10/25/93]
10/29/93	17	REPLY BRIEF by plaintiff Sandra L. Craft in support of pltf's motion for summary judgment [12-1] [Entry date 11/01/93]

DATE	DOCKET NUMBER	PROCEEDINGS
11/3/93	18	SUPPLEMENT by defendant IRS in support of the United States' Motion for summary judgment [13-1] w/cert of svc and exhibit #8 [Entry date 11/04/93]
		* * * * *
7/18/94	23	SUPPLEMENTAL BRIEF IN OPPOSITION by pltf Craft re United States' motion for partial summary judgment [13-1] [Entry date 07/19/94]
		* * * * *
7/21/94	-	PROCEEDING before Judge Gordon J. Quist on 7/21/94 from 3:00 – 4:35 p.m. re Cross-motions for summary judgment [13-1], [12-1]; Motions taken under advisement; Court Reporter – Diane Calsbeek [Entry date 07/26/94]
8/5/94	25	SUPPLEMENTAL BRIEF by dft in support of United States' motion for summary judgment [13-1] w/cert of svc [Entry date 08/08/94]

DATE	DOCKET NUMBER	PROCEEDINGS
9/12/94	26	OPINION (7 pgs) by Judge Gordon J. Quist (cc: all counsel) [Entry date 09/13/94]
9/12/94	27	ORDER (1 pg) in accordance w/the Opinion by Judge Gordon J. Quist granting dft's motion for summary judgment [13-1]; denying pltf's motion for summary judgment [12-1]; terminating case (cc: counsel) [Entry date 09/13/94]
9/22/94	28	MOTION by pltf for new trial under FRCP 59(a), or in the alternative to amend judgment under FRCP 59(e) as to fraudulent conveyance issue w/brief in support [Entry date 09/23/94]
9/22/94	29	MOTION by pltf to amend judgment under FRCP 52(b) & 59(e) as to attachment of federal tax lien issue w/brief in support and exhibit 1 [Entry date 09/23/94]

DATE	DOCKET NUMBER	PROCEEDINGS
9/22/94	30	MOTION by pltf to stay execution pursuant to FRCP 62(b) w/brief in support [Entry date 09/23/94]
9/22/94	31	MOTION by pltf to refer case to Bankruptcy Court for determination of Don Craft's property interests pursuant to 28 USC Sec. 157(a) and W.D.L.R. 57 w/brief in support [Entry date 09/23/94]
		* * * * *
10/7/94	33	RESPONSE IN OPPOSITION by dft IRS to pltf's motion to amend judgment under FRCP 52(b) & 59(e) as to attachment of federal tax lien issue [29-1] w/cert of svc [Entry date 10/13/94]
10/7/94	34	RESPONSE IN OPPOSITION by dft IRS to pltf's motion for new trial under FRCP 59(a) [28-1], or in the alternative, to amend judgment under FRCP as to fraudulent conveyance issue [28-2] w/cert of svc [Entry date 10/13/94]

DATE	DOCKET NUMBER	PROCEEDINGS
10/7/94	35	RESPONSE IN OPPOSITION by dft IRS to pltf's motion to refer case to Bankruptcy Court for determination of Don Craft's property interests pursuant to 28 USC Sec. 157(a) and W.D.L.R. 57 [31-1] w/cert of svc [Entry date 10/13/94]
11/17/94	36	OPINION (4 pgs) by Judge Gordon J. Quist (cc: all counsel)
11/17/94	37	ORDER (2 pgs) in accordance w/the Opinion by Judge Gordon J. Quist: Pltf's motion to refer case to Bankruptcy Court for determination of Don Craft's property interests pursuant to 28 USC Sec. 157(a) W.D.L.R. 57 [31-1] is denied; Pltf's motion to stay execution pursuant to FRCP 62(b) [30-1] is granted; Pltf's motion to amend judgment under FRCP 52(b) & 59(e) as to attachment of federal tax lien issue [20-1] is grnated – pltf's complaint is reinstated for further proceedings to determine the value of pltf's

DATE	DOCKET NUMBER	PROCEEDINGS
		interest in the property as of 8/28/89; and Pltf's motion for new trial under FRCP 59(a) [28-1] and/or to amend judgment under FRCP 59(e) as to fraudulent conveyance issue [28-2] is denied; Case reopened (cc: all counsel)
		* * * * *
2/27/95	40	RENEWED MOTION by dft for summary judgment w/ mem of law in support, declaration in support, exhibits & prf of svc [Entry date 02/28/95]
5/17/95	41	MOTION by pltf for leave to file delayed response to mtn for summary judgment w/proposed pldg. [Entry date 05/18/95]
5/18/95	42	ORDER (1 pg) by Judge Gordon J. Quist granting pltf's motion for leave to file delayed response to mtn for summary judgment [41-1] (cc: all counsel)

DATE	DOCKET NUMBER	PROCEEDINGS
5/18/95	43	RESPONSE AND MEMORANDUM OF LAW IN OPPOSITION by pltf to the USA's renewed motion for summary judgment [40-1] w/exhibits A-G & attachments [Edit date 05/18/95]
5/24/95	44	OPPOSITION by USA to pltf's mtn for leave to file response to USA's renewed mtn for summary judgment w/cert of svc [Entry date 05/26/95]
5/30/95	45	REPLY BRIEF by dft in support of the United States' Motion for summary judgment [40-1] w/cert of svc [Entry date 06/01/95]
7/12/95	46	OPINION AND ORDER (3 pgs) by Judge Gordon J. Quist denying the United States' Renewed Motion for summary judgment [40-1] (cc: all counsel) [Entry date 07/14/95]

DATE	DOCKET NUMBER	PROCEEDINGS
	* * * * *	
9/6/95	49	STIPULATION OF FACTS submitted by pltf & dft re fair mkt value of the Berwyck property over a period of years [Entry date 09/07/95]
9/11/95	-	PROCEEDING before Judge Gordon J. Quist; Pretrial conf held; Trial cancelled; Final briefs due in 14 days (9/25/95); Ct Rptr – D. Calsbeek [Entry date 09/12/95]
9/11/95	50	ORDER (1 pg) by Judge Gordon J. Quist: In accordance w/the final pretrial conf held on 9/11/95, the trial set for 9/13/95 is cancelled; The ptys have 14 days to submit final briefs (9/25/95) (cc: all counsel on 9/12/95) [Entry date 09/12/95]
9/21/95	51	SUPPLEMENTAL BRIEF by dft IRS re Order [50-1] w/exhibit 1 and cert of svc [Entry date 09/22/95]

DATE	DOCKET NUMBER	PROCEEDINGS
9/25/95	52	SUPPLEMENTAL BRIEF by pltf re scheduling order [50-1] [Entry date 09/26/95]
10/26/95	53	OPINION (3 pgs) by Judge Gordon J. Quist (cc: all counsel on 10/27) [Entry date 10/27/95]
10/26/95	54	FINAL JUDGMENT (1 pg) by Judge Gordon Quist in accordance w/the Opinion awarding the United States $50,293.94 of the escrowed sales proceeds from the Berwyck property; The remainder of the escrowed fund will be released to the pltf; terminating case (cc: all counsel on 10/27/95) [Entry date 10/27/95]
12/22/95	56	NOTICE OF APPEAL to Circuit Court by plaintiff Sandra L. Craft, [54-2] re: decision entered on 10/26/95 and Order entered on 9/12/94 [Entry date 01/03/96]
12/22/95	57	RECEIPT # 033540 in the amount of $105.00 submitted by Sandra L. Craft for appeal fee [Entry date 01/03/96]

DATE	DOCKET NUMBER	PROCEEDINGS
12/26/95	55	NOTICE OF APPEAL to Circuit Court by dft IRS re the Final Judgment entered on 10/26/95 [54-1] w/cert of svc [Entry date 12/27/95]
		* * * * *
1/8/97	-	MAILED record on appeal to CCA re: CCA # 96-1038/1039, appeal [55-1], appeal [56-1]; consisting of 3 vol. of pleadings, 1 vol. of transcripts, 0 vol. of depositions pursuant to a request from CCA (cc: all counsel)
1/16/96	60	TRANSCRIPT of Motion Hearing held July 21, 1994 before Judge Gordon J. Quist, transcribed by Dianne C. Calsbeek, Court Reporter (ghl)
1/24/97	65	TRANSMISSION FORM showing record of appeal [55-1], appeal [56-1] filed by CCA on 1/15/97 and assigned CCA 96-1038 [Entry date 01/29/97]

DATE	DOCKET NUMBER	PROCEEDINGS
4/3/98	66	INFORMATION copy of slip opinion from CCA reversing/ remanding judgment/order, [54-2] re: CCA # 96-1038/1039 appeal [55-1], appeal [56-1] for further proceedings in accordance with this opinion [Edit date 04/10/98]
5/29/98	67	MANDATE from Sixth Circuit Court of Appeals re: CCA #: 96-1038: 96-1039; reversing and remanding the Decision of the District Court [Appeal [55-1] reversing and remanding the Decision of the District Court [Appeal [56-1] re: order/judgment # 54 as to deft IRS. The certified record will be sent under-separate cover.
6/3/98	68	ORDER Scheduling Rule 16 Status Conference by Judge Gordon J. Quist; a status conf is set for 8/5/98 at 4:00 p.m. before Judge Quist; a joint status report must be filed three (3) business days prior to the scheduled conf (7/13/98) (cc: all counsel 6 3/98) [Entry-date 06/08/98]

DATE	DOCKET NUMBER	PROCEEDINGS
6/22/98	-	RECORD on Appeal returned from CCA re: CCA # 96-1039, appeal [55-1], appeal [56-1]; consisting of three (3) vol. of pleadings, one (1) vol. of transcripts, no (0) vol. of depositions [Entry date 06/23/98]
8/3/98	69	JOINT STATUS REPORT filed
8/5/98	-	PROCEEDING before Judge Gordon J. Quist; Rule 16 Status Conf held in chambers [Entry date 08/11/98]
		* * * * *
10/8/98	73	MOTION by pltf for summary judgment [Entry date 10/09/98]
10/13/98	74	ORDER (1 pg) by Judge Gordon J. Quist denying pltf's motion for summary judgment [73-1] (cc: all counsel 10/14/98) [Entry date 10/14/98]
		* * * * *
11/16/98	76	TRIAL BRIEF submitted by pltf [Entry date 11/17/98]
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
11/24/98	79	TRIAL BRIEF submitted by deft w/cert of svc [Entry date 11/25/98]
11/30/98	-	PROCEEDING before Judge Gordon J. Quist; final Pretrial conf held [Entry date 12/01/98]
12/1/98	-	PROCEEDING before Judge Gordon J. Quist; Bench Trial Day 1; concluded; parties shall have fourteen days to file post trial briefs and until 1/1/99 to file response briefs; Court Reporter: Diane Calsbeek [Entry date 12/02/98]
12/1/98	80	FINAL PRE-TRIAL ORDER approved (7 pgs) by Judge Gordon J. Quist (cc: all counsel 12/2/98) [Entry date 12/02/98]
		* * * * *
12/18/98	82	POST TRIAL BRIEF by pltf [Entry date 12/21/98]
		* * * * *
12/29/98	85	POST TRIAL BRIEF by deft [Entry date 01/06/99]

DATE	DOCKET NUMBER	PROCEEDINGS
1/7/99	86	POST TRIAL RESPONSE BRIEF by pltf [Entry date 01/11/99]
3/30/99	87	FINDINGS OF FACT and CONCLUSIONS OF LAW (25 pgs) by Judge Gordon J. Quist: a judgment consistent w/these Findings of Fact and Conclusions of law will be entered (cc: all counsel 3/30/99) [Entry date 04/01/99]
3/30/99	88	JUDGMENT: (1 pg) by Judge Gordon J. Quist: the US is awarded $6,693 of the ex-crowed [sic] sales proceeds from the Berwyck Property, plus interest on that amt from 10/26/95; the remainder of the escrowed sales proceeds plus interes [sic] shall be delivered to the pltf; terminating case (cc: all counsel 3/30/99) [Entry date 04/01/99]
4/2/99	89	MOTION by pltf to amend judgment under FRCP 52 & 59 w/brief in support [Entry date 04/05/99]

DATE	DOCKET NUMBER	PROCEEDINGS
4/26/99	90	MEMORANDUM ORDER (4 pgs) by Judge Gordon J. Quist granting in part and denying in part pltfs motion to amend judgment under FRCP 52 & 59 [89-1]; the judgment entered 3/30/99 is AMENDED to provide that $6,693 is awarded to the US w/out interest and that the remainder of the escrowed sales proceeds shall be delivered to pltf w/out interest (cc: all counsel)
6/11/99	91	TRANSCRIPT of Bench Trial held 12/1/98 before Judge Gordon J. Quist; transcribed by Diane C. Calasbeek [Entry date 06/14/99]
6/22/99	92	NOTICE OF CROSS-APPEAL to Circuit Court of Appeals by pltf Sandra L. Craft re decision [90-1] entered on 4/26/99 [Entry date 06/23/99]
6/24/99	93	NOTICE OF APPEAL to Circuit Court of Appeals by deft IRS re decision [90-1] entered on 4/26/99 w/cert of svc [Entry date 06/25/99]

* * * * *

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Docket No. 96-1038

SANDRA L. CRAFT, PLAINTIFF-APPELLANT/
CROSS-APPELLEE

v.

THE UNITED STATES OF AMERICA, ACTING THROUGH
THE COMMISSIONER OF INTERNAL REVENUE,
DEFENDANT-APPELLEE/CROSS-APPELLANT

[Decided: Apr. 1, 1998]

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1/10/96	Civil Case Docketed. Notice filed by counsel for Appellant Cross-Appellee Sandra L. Craft. Transcript needed:
	* * * * *
8/21/96	BRIEF filed by Jeffrey Alan Moyer for Appellant Cross-Appellee Sandra L. Craft. Copies: 5. Certificate of Service date 8/20/96. Number of Pages: 38.
8/21/96	Request to require oral argument filed by Jeffrey Alan Moyer for Appellant Cross-Appellee Sandra L. Craft.

DATE	PROCEEDINGS
	* * * * *
10/7/96	BRIEF filed by Sara S. Holderness for Appellee Cross-Appellant CIR in 96-1038, and 96-1039 Copies: 05. Certificate of Service date 10/4/96. Number of Pages: 57.
10/7/96	Request to require oral argument filed by Sara S. Holderness for Appellee Cross-Appellant CIR in 96-1038, and 96-1039
	* * * * *
11/25/96	BRIEF filed by Jeffrey Alan Moyer for Appellant Cross-Appellee Sandra L. Craft in 96-1038, Jeffrey Alan Moyer for Appellant Cross-Appellee Sandra L. Craft in 96-1039. Copies: 6. Certificate of service date 11/19/96 Number of Pages: 20 + 6.
11/25/96	SEE RULING ON 11/25/96. BRIEF filed by Jeffrey Alan Moyer for Appellant Cross-Appellee Sandra L. Craft in 96-1038, Jeffrey Alan Moyer for Appellant Cross-Appellee Sandra L. Craft in 96-1039. Copies: 7. Certificate of service date 11/22/96. Number of Pages: 21 + 6.
	* * * * *
12/23/96	BRIEF filed by Marion E.M. Erickson for Appellee Cross-Appellant CIR in 96-1038, in 96-1039. Copies: 5. Certificate of service date 12/18/96. Number of Pages: 10+ 2.

DATE	PROCEEDINGS
12/27/96	BRIEFING LETTER SENT resetting cross appeal briefing schedule: appendix 1/9/97
1/10/97	APPENDIX filed by Jeffrey Alan Moyer for Appellant Cross-Appellee Sandra L. Craft in 96-1038, in 96-1039. Copies: 5. Certificate of service date 1/9/97
1/13/97	APPENDIX TENDERED. Received from Jeffrey Alan Moyer for Appellant Cross-Appellee Sandra L. Craft in 96-1038, in 96-1039. Copies: 5. Certificate of service date 1/9/97 Corrections to be made: index of appendix incorrect new index; due 1/14/97 for Jeffrey Alan Moyer in 96-1038, in 96-1039
1/14/97	Appellant LETTER filed correcting appendix defect. Corrections made: new index received and placed in each copy of joint appendix. Letter from Jeffrey Alan Moyer for Appellant Cross-Appellee Sandra L. Craft in 96-1038, in 96-1039. Certificate of service date 1/14/97
1/15/97	CERTIFIED RECORD filed. Volumes include 1 Tr; 3 Pl.
3/20/97	ADDITIONAL CITATION filed by Sara S. Holderness for Appellee Cross-Appellant CIR. Certificate of service 3/18/97.

DATE	PROCEEDINGS
7/30/97	Oral argument date set for 9/16/97 in court room 636. Notice of argument sent to counsel.
9/16/97	CAUSE ARGUED on 9/16/97 by Jeffrey Alan Moyer for Appellant Cross-Appellee Sandra L. Craft in 96-1038, David Carmack for Appellee Cross-Appellant CIR in 96-1038 before Judges Ryan, Suhrheinrich, Cole.
1/30/98	ADDITIONAL CITATION filed by Jeffrey Alan Moyer for Appellant Cross-Appellee Sandra L. Craft. Certificate of service 1/30/98.
2/9/98	NOTIFICATION filed by Jeffrey Alan Moyer – change of address. Dated: 2/6/98 Automation notified.
4/1/98	OPINION filed: the judgment of the district court granting summary judgment to the defendant USA is REVERSED and the case in REMANDED for further proceedings. Decision for publication pursuant to local rule 24. James L. Ryan, concurring, Richard F. Suhrheinrich, Circuit Judge, R. G. Cole, Authoring Judge.
4/1/98	JUDGMENT: REVERSED and remanded.
5/27/98	MANDATE ISSUED with no cost taxed.

* * * * *

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Docket No. 99-1734

SANDRA L. CRAFT, PLAINTIFF-APPELLEE/
CROSS-APPELLANT

v.

UNITED STATES OF AMERICA, ACTING THROUGH THE
COMMISSIONER OF INTERNAL REVENUE, DEFENDANT-
APPELLANT/CROSS-APPELLEE

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
6/29/99	Civil Case Docketed. Notice filed by Appellant Sandra L. Craft. Transcript needed:
	* * * * *
10/13/99	PETITION for en banc hearing filed by David English Carmack for Appellant Cross-Appellee CIR. Certificate of service date 10/12/99.
	* * * * *

DATE	PROCEEDINGS
11/12/99	RESPONSE to a petition for en banc hearing, filed by David English Carmack. Response filed by Jeffrey Alan Moyer for Appellee Cross-Appellant Sandra L. Craft. Certificate of service date 11/12/99.
	* * * * *
12/2/99	ORDER filed denying petition for en banc hearing [2030443-1] filed by David English Carmack Entered by order of the court.
	* * * * *
12/30/99	Appellant MOTION filed to file supplemental brief. Motion filed by Joan I. Oppenheimer for Appellant Cross-Appellee CIR in 99-1734, 99-1737. Certificate of service date 12/29/99.
12/30/99	ADDITIONAL CITATION filed by Joan I. Oppenheimer for Appellant Cross-Appellee CIR in 99-1734, 99-1737. Certificate of service date 12/29/99.
12/30/99	TENDERED: Supplemental "Opening Brief" from Joan I. Oppenheimer for Appellant Cross-Appellee USA, CIR in 99-1737.
1/7/00	RULING granting motion to file supplemental brief [2074560-1] filed by Joan I. Oppenheimer appellee may file a response, nte 6 pages. Response due by 1/18/00 for Jeffrey Alan Moyer in 99-1734.

DATE	PROCEEDINGS
1/7/00	Supplemental brief filed by Joan I. Oppenheimer for Appellant Cross-Appellee CIR in 99-1734/99-1737. Copies: 4. Certificate of service date 12/29/99. Number of pages: 6.
1/11/00	APPENDIX filed by Joan I. Oppenhemier for Appellant Cross-Appellee USA, Appellant Cross-Appellee CIR in 99-1734, 99-1737. Copies: 05 – 2 volumes. Certificate of service date 1/7/00
1/18/00	Supplemental brief filed by Jeffrey Alan Moyer for Appellee Cross-Appellant Sandra L. Craft in 99-1734, in 99-1737. Copies: 4. Certificate of service date 1/17/00. Number of pages: 6.
1/21/00	FINAL BRIEF filed by Jeffrey Alan Moyer for Appellee Cross-Appellant Sandra L. Craft in 99-1734. Copies: 07 Certificate of service date 1/20/00. Number of pages: 36 (8,621).
1/21/00	Request to require oral argument filed by Jeffrey Alan Moyer for Appellee Cross-Appellant Sandra L. Craft in 99-1734, 99-1737
1/21/00	FINAL BRIEF filed by Jeffrey Alan Moyer for Appellee Cross-Appellant Sandra L. Craft in 99-1734, 99-1737. Copies: 07. Certificate of service date 1/20/00. Number of Pages: 23 (3,285).

DATE	PROCEEDINGS
1/24/00	FINAL BRIEF filed by Joan I. Oppenheimer for Appellant Cross-Appellee USA, Appellant Cross-Appellee CIR in 99-1734, 99-1737. Copies: 07. Certificate of service date 1/19/00. Number of Pages: 47 (10,133).
2/7/00	FINAL BRIEF filed by Joan I. Oppenheimer for Appellant Cross-Appellee USA, Appellant Cross-Appellee CIR in 99-1734, 99-1737. Copies: 07. Certificate of Service date 1/21/00. Number of Pages: 60 (14,092).
2/7/00	Request to require oral argument filed by Joan I. Oppenheimer for Appellant Cross-Appellee USA, Appellant Cross-Appellee CIR in 99-1734, 99-1737
	* * * * *
8/10/00	CAUSE ARGUED on 8/10/00 by Joan I. Oppenhemier for Appellant Cross-Appellee USA in 99-1734/99-1737, Jeffrey Alan Moyer for Appellee Cross-Apellant Sandra L. Craft in 99-1734/99-1737, before Judges Keith, Cole, Gilman.

DATE	PROCEEDINGS
11/22/00	OPINION filed: the district court's judgment is AFFIRMED, we deny Craft's motion for litigation costs and the motion to dismiss the government's appeal. Decision for publication pursuant to local rule 206. Damon J. Keith, R. G. Cole (AUTHORING), Ronald L. Gilman, concurring; Circuit Judges.
11/22/00	JUDGMENT: AFFIRMED.
1/8/01	PETITION for en banc rehearing filed by David English Carmack for Appellant Cross-Appellee CIR. Certificate of service date 1/5/01.
2/1/01	LETTER SENT by blh to Jeffrey Alan Moyer for Appellee Cross-Appellant Sandra L. Craft notifying that party is directed to respond to a petition for en banc rehearing [2284336-1] filed by David English Carmack. Response due by 2/15/01.
2/15/01	RESPONSE to a petition for en banc rehearing [2284336-1] filed by David English Carmack. Response filed by Jeffrey Alan Moyer for Appellee Cross-Appellant Sandra L. Craft. Certificate of service date 2/14/01.
3/16/01	ORDER filed denying petition for en banc rehearing [2284336-1] filed by David English Carmack Damon J. Keith, R. G. Cole, Ronald L. Gilman, Circuit Judges.

DATE	PROCEEDINGS
3/26/01	MANDATE ISSUED with no cost taxed.

* * * * *

RHOADES, MCKEE, BOER, GOODRICH & TITTA
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AFFILIATED OFFICES
DE FRANCESCO & DE FRANCESCO
ST. JOSEPH, MI & NEW BUFFALO, MI

[NAMES OMITTED]

January 21, 1993

Ms. Diane Chiles
TRANSAMERICA TITLE
921 North Division
Grand Rapids, Michigan 49503

Re: Sandra Craft and Don Craft Escrowed Funds

Dear Ms. Chiles:

This letter should serve as sufficient documentation and authority for TransAmerica Title to release the full amount of $119,888.20 currently being escrowed in the name of Sandra Craft to the law firm of Rhoades, McKee, Boer, Goodrich & Titta. The release of these funds is with the knowledge and consent of the Internal Revenue Service with the understanding that upon

receipt of those funds, the law firm of Rhoades, McKee, Boer, Goodrich & Titta will disburse one-half of those funds to Mrs. Sandra Craft as the Internal Revenue Service has no claim against her share of those funds. The remaining one-half, or $59,944.10 will be placed in an interest bearing account at the law firm of Rhoades, McKee, Boer, Goodrich & Titta until such time as a resolution of the tax lien dispute is reached and an agreement is signed by both the Internal Revenue Service and representatives of Don Craft or until ordered to release those funds by an appropriate court order.

The signatures listed below should serve as sufficient authority for TransAmerica Title to release those funds to Rhoades, McKee, Boer, Goodrich & Titta. The Crafts thank you for your time, cooperation and understanding in holding those funds in escrow for them until now.

Very truly yours,

RHOADES, MCKEE, BOER, GOODRICH & TITTA

/s/ JEFF MOYER
JEFF A. MOYER
Attorney For Sandra And
Don Craft

JAM/klm

I acknowledge and consent to the release of the escrowed funds by TransAmerica Title to Rhoades, McKee, Boer, Goodrich & Titta under the terms outlined above.

Dated: February 9, 1993

By: TERRY L. ZABEL
Terry Zabel, Internal Revenue Service, District Counsel

UNITED STATES COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

Case No. 1:93-CV-306
HON. GORDON J. QUIST

SANDRA L. CRAFT, PLAINTIFF

vs.

THE UNITED STATES OF AMERICA, ACTING THROUGH THE INTERNAL REVENUE SERVICE, DEFENDANT

PLAINTIFF'S RESPONSE BRIEF IN OPPOSITION TO UNITED STATES' MOTION FOR PARTIAL SUMMARY JUDGMENT

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[2]

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TABLE OF AUTHORITIES

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Dow v. State of Michigan, 396 Mich. 192 (1976) [40, 43]

FMB-First Michigan Bank v. Van Rhee, 681 F. Supp. 1264 (W.D. Mich. 1987) [39]

In the Matter of Grosslight (*Liberty State Bank v. Grosslight*), 757 F.2d 773 (6th Cir. 1985) [47]

In the Matter of Ignasiak, 22 B.R. 828 (Bankr. E.D. Mich. 1982) [51]

In the Matter of Jackson (*Jackson* v. *Leitch*), 92 B.R. 211 (Bankr. W.D. Mich. 1988) [46]

In the Matter of Jones, 31 B.R. 372 (Bankr. E.D. Mich. 1983) [46]

In the Matter of Wickstrom (*Lasich* v. *Estate of Wickstrom*), 113 B.R. 339 (Bankr. W.D. Mich. 1990) [48]

Muskegon Lumber & Fuel Co. v. Johnson, 338 Mich. 655 (1954) [46]

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Shaw v. United States, 94 F. Supp. 245 (W.D. Mich. 1939) [46]

United States v. Bess, 357 U.S. 51 (1958) [40]

United States v. Certain Real Property Located at 2525 Leroy Lane, 910 F.2d 343 (6th Cir. 1990) [48]

[3]
United States v. Certain Real Property Located at 2525 Leroy Lane, 972 F.2d 136 (6th Cir. 1992) [49-50, 51]
United States v. Nathanson, 60 F. Supp. 193 (E.D. Mich. 1945) [46]
United States v. National Bank of Commerce, 472 U.S. 713 (1985) [40, 45]
United States v. Rodgers, 461 U.S. 677 (1982) [40, 43, 44, 46]

[4]

Statutes:

M.C.L.A. § 552.102 [51]
M.C.L.A. § 557.71 [42, 52]
M.C.L.A. § 557.101 [36, 50, 51]

Rules:

F.R.C.P. 56 [38]

[5]

ISSUES PRESENTED

I. WHETHER THE UNITED STATES' FEDERAL TAX LIEN ATTACHED TO THE TAXPAYER'S INTEREST IN REAL PROPERTY HELD IN A TENANCY BY THE ENTIRETIES PRIOR TO ITS CONVEYANCE TO THE PLAINTIFF?

ANSWER: No.

II. WHETHER THE UNITED STATES' FEDERAL TAX LIEN ATTACHED TO THE TAXPAYER'S INTEREST IN REAL PROPERTY HELD IN A TENANCY BY THE ENTIRETIES UPON ITS CONVEYANCE TO THE PLAINTIFF?

ANSWER: No.

[6]

PLAINTIFF'S RESPONSE BRIEF IN OPPOSITION TO UNITED STATES' MOTION FOR PARTIAL SUMMARY JUDGMENT

Summary of Case

Plaintiffs concur with the United States' Motion in stating that the action before the Court is a civil action brought by Plaintiff Sandra L. Craft to quiet title to the proceeds from the sale of certain real property located at 2656 Berwyck Rd., S.E., Grand Rapids, Michigan, (hereinafter referred to as "Berwyck Property"), formerly owned by the Plaintiff and her husband Don Craft, as tenants by the entireties. Plaintiff would clarify the United States' analysis of the conveyance in question in that the copy of the Quit-claim deed involved more accurately reflects a conveyance by the owner, the husband and wife entity which held that property as tenants by the entireties, who then conveyed the real property to the Plaintiff. (See Govt. Exh. 3) Such a conveyance thereby terminated the former tenancy by the entireties in accordance with the statutory provisions of MCLA § 557.101.

Plaintiff does not dispute that the United States has a perfected Federal tax lien filed against the Plaintiff's husband for unpaid Federal income tax liabilities nor that the lien is perfected to the extent of any equity in property owned by Don Craft in Kent County as of the date of filing his individual Chapter 7 Bankruptcy petition, January 30, 1992. Plaintiff further agrees that pursuant to an escrow agreement reached between the Crafts and the Internal Revenue Service (IRS), the sale of the [7] subject property was allowed to be closed free

and clear of any tax liens with any existing Federal tax liens being transferred with the same right, title and interest to the proceeds from that sale as the lien may have had with respect to the property itself.

The terms of that agreement further provided that fifty percent (50%) of the net sales proceeds would be retained in an escrow account pending a resolution of this issue between the parties. However, that agreement contained no terms, expressly or impliedly, that indicated in any manner whatsoever that the other fifty percent of the net sales proceeds which were released to the Plaintiff were in any way in satisfaction of her interest. (Govt. Brf, fn 2, p2) The agreement further did not state, expressly or impliedly, that the Plaintiff's interest was claimed to only be fifty percent of the equity in a property which she had owned and which was titled exclusively in her name as fee simple owner for a period of over four years prior to the sale.

Statement of Facts

Plaintiff Sandra L. Craft concurs in the Statement of Facts #1 through #14 set forth in the United States' Motion for Partial Summary Judgment for purposes of the two motions currently before the Court. (Govt. Brf, p. 2-4) Plaintiff further stipulates to the validity of those documents attached as Exhibits to the United States' Motion and cited in its Statement of Facts for purposes of the Court's consideration of these two summary judgment motions only.

[8]

Legal Argument

A. Standard for Summary Judgment.

Summary judgment under Rule 56 is appropriate where no issue of material fact necessary to decide the matter on its merits remains contested and one party is entitled to judgment as a matter of law.

> "Summary judgment is appropriate only where no genuine issue of material fact remains to be decided and the moving party is entitled to judgment as a matter of law. *Atlas Concrete Pipe, Inc v. Roger J. Au & Son, Inc.*, 668 F.2d 905, 908 (6th Cir. 1982), *see Willetts v. Ford Motor Co.*, 583 F.2d 852, 854 (6th Cir. 1978); *Felix v. Young*, 536 F.2d 1126, 1130 (6th Cir. 1976). The function of a motion for summary judgment is not to allow the court to decide issues of fact but rather to determine whether there is an issue of fact to be tried. *United States v. Articles of Device, Etc.*, 527 F.2d 1008, 1011 (6th Cir. 1976); *Aetna Ins. Co. v. Cooper, Wells & Co.*, 234 F.2d 342, 345 (6th Cir. 1956). The moving party bears the burden of clearly establishing the non-existence of any genuine issue of fact material to a judgment in his favor. *Adickes v. S.H. Kress and Co.*, 398 U.S. 144, 157, 90 S. Ct. 1598, 1608, 26 L.Ed.2d 142 (1970); *Articles*, 527 F.2d at 1011. In determining whether there are genuine issues of fact warranting a trial, the evidence will be viewed in the light most favorable to the party opposing the motion. *United States v. Diebold, Inc.*, 369 U.S. 654, 655, 82 S. Ct. 993, 994, 8 L.Ed.2d 176 (1962); *Bohn Aluminum & Brass Corp. v. Storm King Corp.*, 303 F.2d 425, 427 (6th Cir. 1962). If a disputed question of material fact remains, the motion for summary judgment must be denied. *Atlas*, 668 F.2d at 908; Felix, 536 F.2d at 1030; *Bohn*, 303 F.2d at 427."

> *FMB-First Michigan Bank v. Van Rhee*, 681 F. Supp. 1264, 1266 (W.D. Mich. 1987).

[9]

Plaintiff Sandra L. Craft asserts this matter is ripe for summary judgment since all the relevant dates, documents and facts necessary to decide the legal question at issue have now been submitted as exhibits to the United States' Motion for Summary Judgment or as exhibits to this brief.

B. Attachment of Federal Tax Lien to Tenancy by the Entireties Property.

The United States based its Motion for Summary Judgment on the proposition that the Federal tax lien of the Internal Revenue Service against Mr. Don Craft, attached to real property held as tenants by the entireties by the Plaintiff and Mr. Craft as husband and wife. The foundation of the United States' motion is based upon its interpretation of a 1975 change in Michigan statute and one case subsequent to that law's enactment. The position of the United States that its Federal tax lien attached to that property is in direct conflict with the specific holdings contained in current, controlling case law in the State of Michigan, the United States District for the Western District of Michigan, and the United States Sixth Circuit Court of Appeals.

The United States cites the Court to numerous cases for the proposition that while State law governs the question of what interest a taxpayer has in property, Federal law then controls the attachment of a Federal tax lien to that property. *United States v. Nat'l Bank of Commerce*, 472 U.S. 713, 722 (1985); *United States v. Rodgers*, 461 U.S. 677 (1982); *Aquilino v. United States*, 363 U.S. 509, 513-514 (1960); *United States v. Bess*, 357 U.S. 51, 55 (1958).

[10]

The Plaintiff does not contest that legal principle or dispute the holdings so cited by the United States in those cases. The legal proposition cited only serves to clarify and focus the issue before the Court on this motion. The actual issue to be decided by the Court is whether or not the property interest held by one spouse in a tenancy by the entireties in Michigan has changed by statute or by case law to the point where that interest is now separate, divisible and distinct from any other property interest including that of his or her spouse. The Plaintiff asserts that voluminous case law suggests that is not the case.

The United States goes to great lengths to assert that the definition of the property interest held by an individual spouse in real property held in a tenancy by the entireties changed upon the enactment of the 1975 Public Act 288. The United States then cites this Court to the case of *Dow v. State of Michigan*, 396 Mich. 192 (1976) as proof of that statutory change. The interpretation of and reliance by the United States on that statutory enactment and the *Dow* case interpreting it are both erroneous and misplaced.

The statutory change to which the United States refers was the enactment of 1975 Public Act 288 which became law on December 10, 1975.

"Sec. 1. A husband and wife shall be equally entitled to the rents, products, income, or profits, and to the control and management of real or personal property held by them as tenants by the entirety."

1975 Public Act 288.

This statutory provision which is now codified at MCLA § 557.71 or MSA § 26.201(1), originated as 1975 House Bill no. 4971. [11] Attached to this brief as Exhibit 1 are documents obtained from the Legislative Service Bureau at the Michigan Capital which track the original enactment of that statute.

Those documents attached include the act as originally proposed, the bill as enrolled, a page from the 1975 history of House bills, a page from the 1975 House Journal showing what language was deleted from the original proposed act, a page from the numerical indices listing the bills before the House by number and general topic, an interim status report on the bill providing some legislative history, and an analysis of the proposed act provided to the legislators by the Analysis Section of the House of Representatives Judiciary Committee. (Exhibit 1)

Numerous places within that package of legislative history indicate that that provision of Michigan statute was enacted simply to rectify historical sex discrimination and to equalize women's rights to property held by a tenancy by the entireties. For the United States to assert that this statute somehow creates separate,

divisible property interests in the husband and wife in property held as a tenancy by the entireties is contrary to the plain meaning of that statute as well as contradicted by the legislative history and intent at that time.

The United States also cites this Court to the *Dow* case for the assertion that Michigan law subsequent to that congressional enactment recognizes a severable and separate property interest in an entireties estate. (Govt. Brf, p. 12-13) That argument by the United States misreads the holding of *Dow v. State of Michigan.*

[12]

The Court in *Dow* decided what constituted sufficient notice to satisfy due process concerns in a situation where there was a State taking of property that was held in a tenancy by the entireties. *Dow*, 396 Mich. at 201-212. In a footnote to that decision, the *Dow* court cites MCLA § 557.71 for the proposition that whatever the law had been previously, each spouse in a tenancy by the entireties was now entitled to separate *notice* of an action by the State which would result in a taking of that property. *Dow*, 396 Mich. at 198, fn 10. No where in the *Dow* decision does that court redefine entireties property interests or use language that "recognizes severable and separate property interest." (Govt. Brf, p. 12)

The United States in the their brief asserts that the *Dow* court held that *each* spouse had significant property interest within protection of the due process clause and *each* spouse had a separate constitutionally protected property interest in entireties property.

(Govt. Brf, p.12) Footnote 19 of the *Dow* case stated that Due Process protects property interests and that those property interests are defined by state law. Nowhere in that footnote or in the case itself did the *Dow* court hold that each spouse had a *separate* property interest in entireties property. The free interchange by the United States of the terms "significant" and "separate" is both inaccurate and misleading.

The *Dow* decision deals with adequate notice in a due process context, it does not contain any holding that can be construed as redefining or recognizing separate, devisable property interests in Michigan tenancy by the entireties property. Equally significant [13] is that fact that in the 17 years subsequent to the *Dow* decision, not one Michigan case, or any case anywhere interpreting Michigan law, has cited *Dow* or even inferred that such a monumental change in Michigan real property law has now occurred.

The United States' Motion further cites the Court to two recent United States Supreme Court opinions in support of their argument that since Michigan now recognizes a separate, devisable property interest in tenancy by the entireties property that interest can therefore be attached by a Federal tax lien.

The United States cites this Court to *United States v. Rodgers*, 461 U.S. 677 (1982), in support of their argument by stating that a "homestead" right under Texas law is very similar to a tenancy by the entireties under Michigan law. (Govt. Brf, p. 9) The United States goes on to base that statement on the concept that both legal principles preclude one spouse from selling or abandoning the property without the consent

of the other, and both are protected from forced sale and the reach of most creditors. (Govt. Brf, p.9)

That assertion by the United States is refuted by the very case and footnote to which the United States cites this Court. Footnote 31 of the *U.S. v. Rodgers* decision contained the following language:

> "31
> . . . .
> . . . .
>
> Second, the dissent relies on a piece of 1954 legislative history concerning the application of the federal tax lien to interests in tenancies by the entirety. *Post*, at 719-720.

[14]

. . . .

> More important, tenancies by the entirety pose a problem quite distinct from that at issue in the case of homestead rights. See *Herndon v. United States*, 501 F.2d at 1220-1221; W. Plumb Federal Tax Liens 37-38 (3d ed. 1972). The basis holding of the line of cases mentioned by the dissent was, not merely that interests in a tenancy by the entirety could not be sold to satisfy a tax debt of one spouse, but that, as a result of the peculiar legal fiction governing tenancies by the entirety in some States, no tax lien could attach in the first place because neither spouse possessed an independent interest in the property.
>
> . . . .

> In the homestead context, by contrast, there is no doubt, even under state law, that not only do **both** spouses (*rather than neither*) have an independent interest in the homestead property, but that a federal tax lien can at least **attach** to each of those interests. See *Paddock v. Siemoneit*, 147 Tex. 571, 584-585 (1949). Thus, **if** the tenancy by the entirety cases are correct, they do no more than illustrate the proposition that, in the tax enforcement context, federal law governs the consequences that attach to property interests, but state law governs whether any property interests exist in the first place." (bold emphasis in original).

United States v. Rodgers, 461 U.S. 677, 703 fn 31 (1982).

While not ruling on the validity of tenancy by the entireties characteristics, the Supreme Court clearly acknowledges that under Texas homestead law, a Federal tax lien can attach to the separate interest of each spouse whereas under tenancy by the entireties neither spouse has an independent interest in the property which would subject it to a Federal tax lien. *Rodgers*, 461 U.S. at 703, fn 31 (1982). The Plaintiff asserts that such a clearly enunciated distinction as stated by the U.S. Supreme Court should allow this Court regard the *Rodgers* case as support of her assertion that the Federal tax lien did *not* attach to property held by her and her husband as tenants by the entirety.

[15]

The motion of the United States places further reliance on the case of the *United States vs. National Bank of Commerce* for the proposition that the United

States Supreme Court has held that the IRS was entitled to levy against and seize a joint bank account of a husband and wife held as a tenancy by the entireties for tax debts of only one spouse. Plaintiff is unclear how the United States feels this case might be applicable since the controlling Michigan precedent both before and after *Cole v. Cardoza*, 441 F.2d 1337 (6th Cir. 1971) which the United States now seeks to overturn is that Michigan does not recognize tenancies by the entirety in personal property except in very limited situations. *In the Matter of Jackson* (*Jackson v. Leitch*), 92 B.R. 211, 213-214 (Bankr. W.D. Mich. 1988); *In the Matter of Jones*, 31 B.R. 372, 376 (Bankr. E.D. Mich. 1983); *Muskegon Lumber & Fuel Co. v. Johnson*, 338 Mich. 655 (1954).

The position of the United States that the Federal tax lien for the tax liabilities of Don Craft attached to the property held as tenancy by the entireties by Plaintiff and her husband, directly contradicts a long line of Michigan, U.S. District for the Western District of Michigan, and Sixth Circuit case law. The case of *Cole v. Cardoza* decided in 1971 by the U.S. Sixth Circuit was not the first, nor was it the most recent, Court to specifically hold that a Federal tax lien against a single spouse cannot attach to real property held as tenancy by the entireties in Michigan. That principal was long ago enunciated by two early Federal court cases in the State of Michigan, those being *Shaw v. United States*, 94 [16] F. Supp. 245, 246 (W.D. Mich. 1939) and *United States v. Nathanson*, 60 F. Supp. 193, 194 (E.D. Mich. 1945) as well as the Michigan case of *Sanford v. Bertrau*, 204 Mich. 244 (1918).

The motion by the United States suggests that somehow Michigan law has changed subsequent to the

enactment of 1975 Public Act 288 in December of 1975 and that *Cole v. Cardoza* is no longer valid law. This assertion by the United States ignores a vast progeny of Federal Court cases subsequent to 1975 which continue to hold unaltered the principle that a Federal tax lien for one spouse cannot attach to real property in the State of Michigan held as tenants by the entireties. In 1985, the U.S. Sixth Circuit held that in Michigan, "Tenants by the entirety, who must be husband and wife, hold under a single title with right of survivorship. Neither husband or wife acting alone can alienate any interest in the property, nor can the creditors of one levy upon the property; but their joint creditors can reach entireties property. See *Sanford v. Bertrau*, 204 Mich. 244 (1918)." *In the Matter of Grosslight* (*Liberty State Bank and Trust v. Grosslight*), 757 F.2d 773, 775 (6th Cir. 1985).

Grosslight was cited approvingly by the U.S. Bankruptcy Court of the Western District of Michigan more recently which went on to state:

> "Under Michigan law, property held by tenancy by the entireties is exempt from the claims and execution of creditors of solely one spouse; however creditors which hold joint claims against both spouses may reach the entireties property notwithstanding is otherwise exempt status. *Sandford v. Bertrau*, 204 Mich 244, (1918). Entireties real property may be transferred or [17] encumbered only by a joint deed or joint mortgage executed by both spouses; jointly the spouses hold complete ownership of entireties property. Conversely, because *neither spouse holds a severable interest*, one spouse cannot unilaterally sever or convey entireties property absent consent by the other spouse. (cites omitted)" (emphasis added)

In the Matter of Wickstrom (*Lasich v. Estate of Wickstrom*), 113 B.R. 339, 346 (Bankr. W.D. Mich. 1990).

Another recent Sixth Circuit case cited by the United States clearly and unequivocally reaffirms the validity of the legal principal which the United States now seeks to overturn. In 1990, the U.S. Sixth Circuit stated:

"Under Michigan law, entireties property may be levied upon by the State for nonpayment of real estate taxes on the real property itself. *See Robbins v. Barron*, 32 Mich. 36 (1875). However, entireties property may not be attached to satisfy the personal tax liability of a single spouse. *Cole v. Cardoza*, 441 F.2d at 1343; *United States v. Nathanson*, 60 F. Supp. 193 (E.D. Mich. 1945)."

United States v. Certain Real Property located at 2525 Leroy Lane, 910 F.2d 343, 350 (6th Cir. 1990).

That case dealt with the ability of the United States to seize real property held in Michigan in a tenancy by the entireties using the Federal Drug Forfeiture laws which provide even greater powers to the United States than those accorded to it under the Internal Revenue Code.

After the case was remanded by the Sixth Circuit and subsequently appealed a second time, the Sixth Circuit in 1992 again reaffirmed that principle when it stated:

"As we stated in our prior opinion, the federal forfeiture statutes do not operate to destroy the fundamental characteristics given to real property [18] by the states. *See Certain Real Property*, 910 F.2d at 349. To allow the United States to step into

Mitchell Marks' place as a tenant by the entirety would destroy the tenancy by the entirety because the unities of time, title and person would be violated. The government did not and could not possess Mitchell Marks' present interest in the tenancy by the entirety. The government's interest come into being only when the tenancy by the entireties is destroyed either by death, divorce, or operation of Michigan law. When the tenancy by the entireties is destroyed, the government gets whatever Mitchell Marks possesses after the entireties estate is destroyed."

United States v. Certain Real Property located at 2525 Leroy Lane, 972 F.2d 136, 138 (6th Cir. 1992).

C. <u>Attachment of Federal Tax Lien to Tenancy by the Entiretires Property upon Conveyance</u>.

The United States argues in the alternative that even if the IRS tax lien did not attach to any interest of Don Craft in tenancy by the entireties property when it was filed, it attached at some "transitory moment" while being conveyed. (Govt. Brf, p. 19-12) The brief of the United States cites the Court to no statutory authority nor a single case in any jurisdiction to support this imaginative, but meritless concept. Unfortunately, such an inventive hypothesis is contradictory to the language of at least two controlling Sixth Circuit cases as well as Michigan statute governing the voluntary termination of tenancy by the entireties.

As previously quoted, the Sixth Circuit has held that the government is only entitled to whatever interest is possessed by the spouse against whom they have a claim *after* the entireties estate is destroyed. *U.S. v. Certain Real Property at 2525 Leroy Lane*, 972 F.2d

136, 138 (6th Cir. 1992). The tenancy by the [19] entireties in the case before the Court was destroyed by operation of law when the tenancy was terminated in accordance with the provisions of MCLA § 557.101 as shown on Government Exhibit 3.

Such a concept does further violence to the holding of *Cole v. Cardoza* which held that such a lien for taxes of one spouse filed against Michigan real property held as tenants by the entirety is a nullity, is without legal effect and is null and void as to the property. *Cole v. Cardoza*, 441 F.2d 1337, 1343-1344 (6th Cir. 1971). The Court in *Cole* omitted only language which could even be inferred to indicate an ability for a federal tax lien to remain dormant or inchoate until such time as a transfer at which time it would spring to life.

The United States concludes by attempting to analogize the Craft situation to either after–acquired property or a circumstance attempts to renounce some asset *prior* to a federal tax lien attaching. It would seem to be without argument that a theory approximating attachment to after-acquired property is not applicable here because Don Craft could not possibly have owned or possessed *more* of an interest *after* he and his wife conveyed away the property, than Don Craft may have had before they conveyed the property. After the conveyance, Don Craft had no claim whatsoever to the Berwyck property. Before the conveyance, Michigan law states that Don Craft had no separate, divisible property interest in the entireties property.

The proposition that the Craft circumstances are analogous to a taxpayer who renounces some expectation of receiving an asset due [20] to a federal tax lien is similarly inapplicable. Don and Sandra Craft purchased

the property in question as tenants by the entirety in May of 1972, *seventeen years* prior to the United States filing a tax lien against Don Craft, and eight years before the first year for which Don Craft was assessed tax liability for by the IRS on substituted returns. His conveyance can hardly be viewed as a renouncement taken to avoid the future attachment of a tax lien to an asset which he did not own at the time.

D. <u>Interest Conveyed by Don Craft</u>.

The amount of valuation of any property interest to which Don Craft might have been entitled is not properly before this Court as part of either of the pending Motions for Summary Judgment. The United States cites the Court to Michigan statute and a Michigan Bankruptcy case to establish that if any attachable interest was conveyed by Don Craft, it amounted to 50% of the net proceeds from the sale of the house. (Govt. Brf, p. 21) Both MCLA § 552.102 and the case of *In the Matter of Ignasiak*, 22 B.R. 828 (Bankr. E.D. Mich. 1982) not only create only a presumption of an equal division of the property, they do so in the context of a divorce. Plaintiff took exclusive title to the Berwyck property after she and her husband terminated the tenancy in accordance with the provisions of MCLA § 557.101 which has nothing to do with a Court-ordered division of property incident to a divorce. Plaintiff further reserves the right to contest that presumption, if the Court finds it applicable, to present such factual evidence as is appropriate [21] in making that determination such as who paid the mortgage, who maintained the property in liveable fashion, who paid the property taxes, etc. *United States v. Certain Real Property Located at 2525 Leroy Lane*, 972 F.2d 136, 139 (6th Cir. 1992).

Conclusion

There has been no change in Michigan law which has the effect of now recognizing by statute separate, divisible property interests in each spouse in a tenancy by the entireties. There also has been no Michigan case, nor any federal case interpreting Michigan law, which interprets MCLA § 557.71 as creating separate, divisible property interests in tenants by the entireties. State law defining what property interest is possessed by a tenant in an entireties estate has not materially changed since the Holding in *Cole v. Cardoza*. Since state law determines what property interest exists that would be available for attachment by a federal tax lien, the tax lien for Don Craft's tax liabilities did not attach to the Berwyck property while held in a tenancy by the entireties.

There is no Michigan statute, no Michigan case law, or case law anywhere interpreting Michigan law, which stands for the proposition that when tenancy by the entireties property is transferred it becomes a tenancy in common "for a transitory moment." The federal tax lien for Don Craft's tax liabilities did not attach to the Berwyck property during any "transitory moment" when the tenancy was terminated in accordance with Michigan law and the property became titled in the Plaintiff's name.

[22]

There is no issue of material fact remaining which would prevent this Court from entering Summary Judgment on the issues of whether the federal tax lien solely for the liabilities of Don Craft attached to the property held by the Plaintiff and her husband as tenants by the entirety upon its filing, or subsequently

upon the property's conveyance to the Plaintiff. The Plaintiff is therefore entitled to judgment as a matter of law and respectfully requests this Court enter Summary Judgment against the United States on both issues.

RHOADES, MCKEE, BOER,
GOODRICH, TITTA
Attorneys for Plaintiff

Date: October 22, 1993 By: JEFF MOYER
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[Exhibit omitted]

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:93 CV 306
HON. GORDON J. QUIST

SANDRA L. CRAFT, PLAINTIFF

v.

THE UNITED STATES OF AMERICA, ACTING THROUGH
THE INTERNAL REVENUE SERVICE, DEFENDANT

Filed: [Dec. 1, 1998]

JOINT FINAL PRETRIAL ORDER

A final pre-trial conference was held on the 30th day of November, 1998, at 11:00 a.m. Appearing were:

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P.O. Box 55
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-6561

1. Exhibits: The following exhibits will be offered by the plaintiff and the defendants:

Exhibits of Plaintiff Sandra L. Craft

Exhibits of Defendant United States of America

a. Warranty Deed dated 5/26/72;
b. Mortgage dated on or about 5/26/72;
c. Referral Report for Potential Fraud Cases dated 10/16/87, with attachments;
d. Notice of Federal Tax Lien dated 3/30/89;
e. Quit Claim Deed dated 8/28/89;
f. Bankruptcy Petition by Don Craft dated 1/30/92, with supporting schedules;
g. Letter dated 1/21/93 regarding escrow of funds;
h. Letter dated 8/6/92 from Donald Craft to IRS;
I. Affidavit of Donald Craft;
j. Affidavit of Sandra L. Craft;
k. NBD Statement of Mortgage Account dated 12/31/86;
l. NBD Mortgage Statements dated 12/31/89; 12/31/90; 12/30/91 and 6/23/82, for loan number 658781-0;
m. Letter dated November 19, 1998, from Charlene S. Veenstra, Deputy Treasurer for City of East Grand Rapids;
n. Letter dated 5/17/95 from Matthew Woolford, City Assessor for City of East Grand Rapids;
o. U.S. Requests for Admission.
p. 1977 Certificate of Assessments and Payments for Don and Sandra Craft;
q. 1978 Certificate of Assessments and Payments for Don and Sandra Craft;
r. 1979 Certificate of Assessments and Payments for Don Craft;

s. 1980 Certificate of Assessments and Payments for Don Craft;

t. 1981 Certificate of Assessments and Payments for Don Craft;

u. 1982 Certificate of Assessments and Payments for Don Craft;

v. 1983 Certificate of Assessments and Payments for Don Craft;

w. 1984 Certificate of Assessments and Payments for Don Craft;

x. 1985 Certificate of Assessments and Payments for Don Craft;

y. 1986 Certificate of Assessments and Payments for Don Craft;

z. 1987 Certificate of Assessments and Payments for Don Craft;

aa. 1988 Certificate of Assessments and Payments for Don Craft;

bb. 1989 Certificate of Assessments and Payments for Don Craft;

cc. 1990 Certificate of Assessments and Payments for Don Craft;

dd. 1991 Certificate of Assessments and Payments for Don Craft;

ee. 1993 Certificate of Assessments and Payments for Don Craft;

ff. 1979 Certificate of Assessments and Payment for Sandra Craft;

gg. 1980 Certificate of Assessments and Payments for Sandra Craft;

hh. 1981 Certificate of Assessments and Payments for Sandra Craft;

ii. 1982 Certificate of Assessments and Payments for Sandra Craft;

jj. 1983 Certificate of Assessments and Payments for Sandra Craft;

kk. 1984 Certificate of Assessments and Payments for Sandra Craft;

ll. 1985 Certificate of Assessments and Payments for Sandra Craft;

mm. 1986 Certificate of Assessments and Payments for Sandra Craft;

nn. 1987 Certificate of Assessments and Payments for Sandra Craft;

oo. 1988 Certificate of Assessments and Payments for Sandra Craft;

pp. 1989 Certificate of Assessments and Payments for Sandra Craft;

qq. 1990 Certificate of Assessments and Payments for Sandra Craft;

rr. 1991 Certificate of Assessments and Payments for Sandra Craft;

ss. 1992 Certificate of Assessments and Payments for Sandra Craft;

tt. 1980, Form 1040 for Sandra Craft;

uu. 1981, Form 1040 for Sandra Craft;

vv. 1982, Form 1040 for Sandra Craft;

ww. 1983, Form 1040 for Sandra Craft;

xx. 1984, Form 1040 for Sandra Craft;

yy. 1985, Form 1040 for Sandra Craft;

2. Uncontroverted Facts: The parties have agreed that the following may be accepted as established facts:

1. Don R. Craft and his wife Sandra Craft purchased the Berwyck property as tenants by the entireties on May 26, 1972;

2. Don R. Craft had been a practicing attorney in Grand Rapids for a substantial period of time;

3. In 1992 , upon the sale of the Berwyck property Don and Sandra Craft moved to Alabama;

4. Don R. Craft failed to timely file federal income tax returns for his taxable years 1979 through 1987;

5. The Internal Revenue Service prepared substitute § 6020(b) federal income tax returns for Don R. Craft for the tax years 1979 through 1986;

6. Don R. Craft incurred tax liabilities for the taxable years 1979 through 1987 in the amount of $482,446.73;

7. These tax liabilities were assessed, with notice and demand duly given, in 1988;

8. A Notice of Federal Tax Lien with respect to these liabilities was recorded with the Kent County Register of Deeds on April 7, 1989;

9. On August 28, 1989, Don R. Craft and Sandra Craft quit claimed their interest in the Berwyck property to Sandra Craft for $1.00;

10. Don R. Craft filed a petition for relief under Chapter 7 of the Bankruptcy Code on January 30, 1992;

11. On June 1, 1992, the Bankruptcy Court entered an order of discharge;

12. On June 11, 1992, the Bankruptcy case was closed;

13. Don and Sandra Craft entered into an agreement with the IRS under which the Berwyck property was sold free and clear of the federal tax liens against Don Craft, and 50% of the net proceed were retained in escrow subject to the same right title and interest that the federal tax lien had in the property;

13. The balance of the net sales proceeds from the sale of the Berwyck property have been distributed to the plaintiff;

14. No event of any legal significance affecting the title or claim to the property occurred at any time between August 28, 1989, and the sale of the property in June of 1992, which would otherwise disturb the United States' claim or title to the interest of Don Craft in the property [U.S. First Request for Admissions, Req. No. 1, Govt. Ex. 1; Plaintiff's Motion to Refer Case to Bankruptcy Court. ¶7];

15. Sandra Craft does not have any claim against any interest Don Craft had in the Berwyck Property from August 28, 1989, through June of 1992 [U.S. First Request for Admissions, Req. No. 2, Govt. Ex. 1];

16. Sandra L. Craft does not have any claim against any interest Don Craft had in the Berwyck Property from August 28, 1989 through June of 1992, which has priority over

the United States' prior perfected federal tax lien [U.S. First Request for Admissions, Req. No. 3, Govt. Ex. 1];

17. Sandra L. Craft did not claim the property tax or the mortgage interest payments for the Berwyck property as deductions for the years 1979, 1980, 1981, 1982, 1983, 1984 and 1985;

18. Sandra L. Craft claimed the property tax or the mortgage interest payments for the Berwyck property as deductions for the years 1986, 1987, 1988, 1989, 1990, 1991 and 1992;

3. Controverted and Unresolved Issues: The factual issues remaining to be determined and issues of law for the Court's determination are:

1. Whether the quit claim conveyance out of entireties on August 28, 1989, was a fraudulent in fact;

2. Whether the conveyance out of entireties was part of scheme to avoid the United States' lien upon the sale of the Berwyck property;

3. Whether the quit claim conveyance out of entireties on August 28, 1989, was fraudulent in law;

4. Whether Don Craft was insolvent prior to his conveyance of the property out of tenancy by the entireties to his wife on August 28, 1989;

5. Whether fair consideration was given to Don Craft for his conveyance on August 28, 1989, to the plaintiff;

6. Whether from 1979 through 1985 Don Craft made fraudulent conveyances into the tenancy by the entireties;

7. Whether Don Craft contributed about $38,000.00 into the tenancy by entirety from 1979 through 1985 in the form of property tax and mortgage payments;

8. Whether Don Craft insolvent from 1979 through 1985, while he was making contributions to or for the benefit of the tenancy by the entirety.

4. Witnesses: Non-expert witnesses to be called by the plaintiff and defendant, except those who may be called for impeachment purposes only, are:

Non-Expert Witnesses of the Plaintiff Sandra L. Craft

1.

Non-Expert Witnesses of the Defendant United States of America

1. Sandra L. Craft
2. Rosie Wilson, Revenue Agent
3. Charlene S. Veenstra, Deputy Treasurer City of East Grand Rapids, Michigan
4. Sue Ann Symons, IRS Special Advisor
5. Representative for National Bank of Detroit;
6. All custodians of records introduced as exhibits;
7. All witnesses listed by plaintiff.

It is understood that, except upon a showing of good cause, no witness whose name does not appear herein

shall be permitted to testify over objection for any purpose except impeachment.

5. **Depositions and Other Discovery Documents:** All depositions, answers to written interrogatories, and requests for admissions, or portions thereof, which are expected to be offered in evidence by the parties are:

Defendant United States:

The United States expects to offer in evidence the following admissions by Sandra L. Craft:

1. That no event of any legal significance affecting the title or claim to the property occurred at any time between August 28, 1989, and the sale of the property in June of 1992, which would otherwise disturb claim or title to the interest of Don Craft in the property [U.S. First Request for Admissions, Req. No. 1 Govt. Ex. 1; Plaintiff's Motion to Refer Case to Bankruptcy Court, ¶7];
2. That Sandra Craft does not have any claim against any interest Don Craft had in the Berwyck Property from August 28, 1989 through June of 1992 [U.S. First Request for Admissions, Req. No. 2, Govt. Ex. 1];
3. That Sandra L. Craft does not have any claim against any interest Don Craft had in the Berwyck Property from August 28, 1989 through June of 1992, which has priority over the United States' prior perfected federal tax lien [U.S. First Request for Admissions, Req. No. 3, Govt. Ex. 1];

6. **Length of Trial:** Counsel estimate the trial will consume 2 days.

7. **Prospects of Settlement:** Counsel for the parties have discussed settlement, but settlement is unlikely insofar as the parties are divided by a number of procedural issues and the United States seeks to reach a final determination of its remedy within the context of an alleged fraudulent conveyance of entireties property.

8. **Damages:** The United States seeks an award of 50% of the net sales proceeds.

FOR DEFENDANT UNITED STATES OF AMERICA
/s/ JOHN A. LINDQUIST
JOHN A. LINDQUIST
Trial Attorney
U.S. Department of Justice
P.O. Box 55
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-6561

FOR PLAINTIFF SANDRA L. CRAFT
/s/ JEFF A. MOYER
Jeff A. Moyer, Esquire
Donovan, Love & Twinney P.L.C.
509 Waters Building
161 Ottawa Ave., N.W.
Grand Rapids, Michigan 49503
Telephone: 616/454-1900

IT IS SO ORDERED THIS
1st day of December, 1998. /s/ GORDON J. QUIST
HON. GORDON J. QUIST
U.S. District Court

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

Case No. 1:93-CV-306

SANDRA L. CRAFT, PLAINTIFF

v.

THE UNITED STATES OF AMERICA, ACTING THROUGH
THE INTERNAL REVENUE SERVICE, DEFENDANT

Filed: Apr. 23, 1993]

COMPLAINT TO QUIET TITLE

NOW COMES the Plaintiff, Sandra L. Craft, by and through her attorneys Rhoades, McKee, Boer, Goodrich & Titta, and files this action against the United States to quiet title to certain real property or the proceeds thereof and in support of this action states the following:

1. The Plaintiff, Sandra L. Craft, is a resident of Birmingham, Alabama.

2. The Defendant, The United States of America, acting through the Internal Revenue Service, conducts business in Kent County, Michigan.

3. Plaintiff Sandra L. Craft and her husband Don R. Craft were Michigan residents formerly residing at 2656 Berwyck Rd., S.E., Grand Rapids, Michigan.

4. Plaintiff has standing and statutory authority to commence this action against the United States of America pursuant to 28 U.S.C. § 2410(a)(1), Actions Affecting Property in Which the United States has a Lien.

5. The Court has jurisdiction to hear and decide this action under provisions of 28 U.S.C. § 1346.

6. The subject of this litigation are the proceeds of the sale of certain real property formerly owned by the Plaintiff located at 2656 Berwyck Rd., S.E., and located in Kent County, Michigan.

7. The proceeds from the June 1992 sale of that real property are currently being held in escrow by agents of TransAmerica Title Insurance Company located at 921 South Division, Grand Rapids, Michigan. (Exhibits A, B, C)

8. Plaintiff Sandra L. Craft and her husband Don R. Craft purchased the subject real property on May 26, 1972 and owned the subject property in a tenancy by the entireties through and including March 30, 1989. (Exhibits D, E)

9. The Defendant United States of America acting through the Internal Revenue Service filed a Notice of Federal Tax Lien Form 668(Y) with the Kent County Register of Deeds on March 30, 1989 based on unpaid taxes assessed solely against Don R. Craft. (Exhibit F)

10. The subject real property was owned by Sandra L. Craft and Don R. Craft as tenancy by the entireties property at the time the Federal tax lien was filed, and remained so until any interest of Don R. Craft was subsequently transferred by Mr. and Mrs. Craft to Sandra L. Craft on August 28, 1989. (Exhibits D, E) Don R. Craft no longer maintained, asserted or claimed

any interest in the subject real property after August 28, 1989.

11. Don R. Craft filed an individual Chapter 7 Bankruptcy Petition in the United States Bankruptcy Court for the Western District of Michigan on January 30, 1992, titled Case No. 92-80551. (Exhibit G)

12. Don R. Craft was granted a discharge by the U.S. Bankruptcy Court of all his dischargeable debts on June 1, 1992. (Exhibit H)

13. Don R. Craft's Chapter 7 Bankruptcy was subsequently closed by the Bankruptcy Court on June 11, 1992.

14. Don R. Craft subsequently moved the U.S. Bankruptcy Court on August 14, 1992 to reopen his Chapter 7 Bankruptcy to accord relief to the Debtor which was granted by order of the U.S. Bankruptcy Court on October 7, 1992. (Exhibits I, J)

15. Don R. Craft also filed Adversary Proceeding No. 92-8542 against the United States of America acting through the Internal Revenue Service seeking to avoid the tax lien against the subject real property on August 14, 1992. (Exhibit K)

16. That Adversary Proceeding was subsequently resolved and withdrawn based on lack of jurisdiction by the Bankruptcy Court over the subject real property with the simultaneous entry by the Court on January 27, 1993 of a consent judgment. That consent judgment stipulated that Don R. Craft had been discharged of all personal liability for personal income taxes with the exception of those taxes listed as priority debts on his Bankruptcy Petition ($10,300) and an additional amount of $2,109 representing the value of Don R. Craft's

personal property to which the IRS was acknowledged to be a secured party. (Exhibit L)

17. The sale of the subject real property was conducted in escrow and one-half of the net proceeds have been released to Mrs. Sandra L. Craft representing what both parties acknowledge to be an amount to which it is undisputed that the IRS had no claim. The remaining one-half of the net proceeds of this sale are currently being held in escrow by agents of Trans-America Title Insurance Company. (Exhibit C)

18. The United States acting through the Internal Revenue Service continues to assert that its lien attaches or attached to one-half of the proceeds of the sale of that real property despite clear and unequivocal language to the contrary in case law representing the controlling precedent in this Circuit.

WHEREFORE, Plaintiff Sandra L. Craft prays that this Court order the following relief:

(1) That the Notice of Federal Tax Lien filed against the subject real property on March 30, 1989 did not attach and be declared null and void;

(2) That the Defendant be ordered to issue a Certificate of Release with a disclaimer stating that the Notice of Federal Tax Lien does not attach to property of Plaintiff Sandra L. Craft;

(3) That it is hereby adjudged and ordered that the Defendant, the United States of America acting through the Internal Revenue Service has no right, title or interest in or to the proceeds of the Plaintiff's property;

(4) That the Plaintiff be awarded costs and expenses incurred as a result of the Plaintiff being forced to institute this action; and

(5) That TransAmerica Title Insurance Company or its agents be hereby ordered to release to the Plaintiff those proceeds currently being held in escrow and any such other or further equitable relief as this Court deems just and proper.

I declare that the statements above are true to the best of my knowledge and belief.

Dated: March 10, 1993 /s/ SANDRA L. CRAFT
SANDRA L. CRAFT

RHOADES, MCKEE, BOER,
GOODRICH & TITTA
Attorneys for Plaintiff

Dated: April 22, 1993 By: JEFF MOYER
JEFF A. MOYER (P44671)
Business address:
600 Waters Building
Grand Rapids, MI 49503
(616) 235-3500

[EXHIBIT A]

RHOADES, MCKEE, BOER, GOODRICH & TITTA
ATTORNEYS AT LAW

161 OTTAWA AVENUE N.W., SUITE 600
GRAND RAPIDS, MICHIGAN 49503-2793
TELEPHONE (616) 235-3500
FAX (616) 459-5102

OF COUNSEL
JEAN MCKEE
CHARLES T. ZIMMERMAN
ROBERT F. WILLIAMS
ROBERT J. DE BOER

AFFILIATED OFFICES
DE FRANCESCO & DE FRANCESCO
ST. JOSEPH, MI & NEW BUFFALO, MI

[NAMES OMITTED]

December 28, 1992

Ms. Diane Chiles
TRANSAMERICA TITLE
921 North Division
Grand Rapids, Michigan 49503

Re: Sandra Craft Escrow Account

Dear Ms. Chiles:

This letter is to confirm our conversation on December 23, 1992 with respect to the funds being held in escrow for Mrs. Sandra Craft by TransAmerica Title Insurance Company. At this time, this office is proceedings with litigation in Federal Bankruptcy Court to force the Internal Revenue Service to release their lien

against the house and accordingly against the funds of Sandra Craft. Since certain facts in this case are somewhat unique, the Internal Revenue Service seems to be taking a posture that it will try this case at however many levels are necessary to not only win but set a precedent for future situations of this type.

It is therefore necessary that this escrow account be continued until this litigation is concluded one way or the other. As a concession to the probable duration of the litigation, we think we have a tentative agreement with the Internal Revenue Service to split the escrowed funds into two portions, one which would represent Sandra Craft's share if Don still owned part of the house, and the other portion would represent Don's share if he still owned part of the house. The Internal Revenue Service has made overtures that it might be willing to release that half belonging to Sandra Craft to her and simply retain the half asserted to belong to Don Craft in an interest-drawing escrow account until the litigation is completed. As soon as that arrangement can be ironed out and put in writing, we will certainly be in touch with your office not only to release one-half of the amount you are presently holding to Sandra Craft, but also to set up a separate escrow account in Don Craft's name at your office or elsewhere if necessary. Mr. and Mrs. Craft and this office sincerely appreciate your cooperation and understanding in assisting them in getting this matter completed as quickly and efficiently as possible.

Finally, if either yourself, your supervisors or any outside personnel such as auditors have any questions

on what the status of the resolution of this matter is, please have them contact this office at your convenience.

Very truly yours,

RHOADES, MCKEE, BOER, GOODRICH & TITTA

/s/ JEFF MOYER
JEFF A. MOYER

JAM/klm

cc: Don Craft

[EXHIBIT B]

RHOADES, MCKEE, BOER, GOODRICH & TITTA
ATTORNEYS AT LAW

161 OTTAWA AVENUE N.W., SUITE 600
GRAND RAPIDS, MICHIGAN 49503-2793
TELEPHONE (616) 235-3500
FAX (616) 459-5102

OF COUNSEL
JEAN MCKEE
CHARLES T. ZIMMERMAN
ROBERT F. WILLIAMS
ROBERT J. DE BOER

AFFILIATED OFFICES
DE FRANCESCO & DE FRANCESCO
ST. JOSEPH, MI & NEW BUFFALO, MI

[NAMES OMITTED]

January 21, 1993

Ms. Diane Chiles
TRANSAMERICA TITLE
921 North Division
Grand Rapids, Michigan 49503

Re: Sandra Craft and Don Craft Escrowed Funds

Dear Ms. Chiles:

This letter should serve as sufficient documentation and authority for TransAmerica Title to release the full amount of $119,888.20 currently being escrowed in the name of Sandra Craft to the law firm of Rhoades, McKee, Boer, Goodrich & Titta. The release of these funds is with the knowledge and consent of the Internal

Revenue Service with the understanding that upon receipt of those funds, the law firm of Rhoades, McKee, Boer, Goodrich & Titta will disburse one-half of those funds to Mrs. Sandra Craft as the Internal Revenue Service has no claim against her share of those funds. The remaining one-half, or $59,944.10 will be placed in an interest bearing account at the law firm of Rhoades, McKee, Boer, Goodrich & Titta until such time as a resolution of the tax lien dispute is reached and an agreement is signed by both the Internal Revenue Service and representatives of Don Craft or until ordered to release those funds by an appropriate court order.

The signatures listed below should serve as sufficient authority for TransAmerica Title to release those funds to Rhoades, McKee, Boer, Goodrich & Titta. The Crafts thank you for your time, cooperation and understanding in holding those funds in escrow for them until now.

Very truly yours,

RHOADES, MCKEE, BOER, GOODRICH & TITTA

/s/ JEFF MOYER
JEFF A. MOYER
Attorneys for Sandra and
Don Craft

JAM/klm

I acknowledge and consent to the release of the escrowed funds by TransAmerica Title to Rhoades, McKee, Boer, Goodrich & Titta under the terms outlined above.

Dated: February 9, 1993 By: TERRY ZABEL
TERRY ZABEL, Internal Revenue Service, District Counsel

[EXHIBIT C]

921 North Division Avenue
Grand Rapids, MI 49503
Telephone 616-459-2400
Fax 616-459-0637

TRANSAMERICA
TITLE INSURANCE COMPANY

February 12, 1993

Mr. Jeff Moyer
Rhoades, McKee, Boer et al
161 Ottawa NW, Suite 600
Grand Rapids, MI 49503

Re: Sandra and Donald Craft

Dear Mr. Moyer:

I have studied your proposal regarding the transfer of funds from Transamerica to your firm.

Inasmuch as the Internal Revenue Service has agreed with the assertion that Mrs. Crafts' assumed 50% share of the proceeds is not subject to the tax lien, we are enclosing our check for those funds. You will note that the check is jointly payable to your firm and Sandra Craft.

Unfortunately, I fail to understand how the transfer of the remaining funds to your firm eliminates Transamerica's liability for the tax lien insofar as Mr. & Mrs. Witt and First Federal of Michigan are concerned. Only a "point blank" release or statement by the IRS or favorable court proceedings can eliminate the effect of the tax lien upon the property we agreed to insure without exception to that tax lien. Until such an

elimination can be obtained, sound business judgement dictates that Transamerica must retain the asset to offset the liability.

For the benefit of your client, we would be willing to invest those funds in an interest-bearing account. Keep in mind that any interest earned would remain in the account until resolution of the matter. Diane Chiles would be most happy to work out the details of the account with you or your client.

Very truly yours,

/s/ MONTE RELNERT
MONTE RELNERT
Manager

Encl.

MLR/js

[Seal Omitted]

77

COUNTY TREASURER'S
TAX CERTIFICATE ON DEED
DATED

LIBER 2120 PAGE 1186

This Indenture, made on 26th day of May in the year one thousand nine hundred and seventy-two

LEE R. ALBERT and wife, SARA ALBERT
3748 Berwyck Rd., S.E., Grand Rapids, Michigan

parties of the first part

AND DON R. CRAFT and wife, SANDRA LEE CRAFT
3816 Berwyck Rd., S.E., East Grand Rapids, Michigan

(mailing address)

parties of the second part

Witnesseth, That the said part ies of the first part, for and in consideration of the sum of

Forty-eight Thousand and No/100ths ($48,000.00) Dollars,

to them in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, do by these presents, grant, bargain, sell, convey, release, alien and confirm unto the said parties of the second part, and their heirs and the survivor of the parties of the second part, his or her heirs or assigns, FOREVER, all that parcel of land situate and being in the City of East Grand Kapids County of Kent, and State of Michigan, and described as follows to-wit:

Lot 91, Albert-Realtors Hampshire Replat, as recorded in Liber 55 of Plats, Pages 8 and 9, Kent County, Michigan.

Tax Certificate as required by Sec. 131, Act No. 154, Public Acts of 1921 duly processed (State nonresident, Section

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining. To have and To hold the said premises, as herein described, with the appurtenances, unto the said parties of the second part, and to their heirs and the survivor of the parties of the second part, his or her heirs or assigns, FOREVER. And the said

LEE R. ALBERT and wife, SARA ALBERT

for themselves, their heirs, executors, and administrators, do covenant, grant, bargain and agree to and with the parties of the second part, their heirs, and the survivor of the parties of the second part, his or her heirs or assigns, that at the time of the ensealing and delivery of these presents they are well seized of the above granted premises in Fee Simple, and that they are free from all incumbrances whatever,

and that they will and their heirs, executors, and administrators shall Warrant and Defend the same against all lawful claims whatsoever.

In Witness Whereof, The said parties of the first part have hereunto set their hands and seal s the day and year first above written.

Signed, Sealed and Delivered in Presence of

Herman H. Reyer

Donna J. Avery

Lee R. Albert

Sara Albert

STATE OF MICHIGAN, } ss.
County of Kent }

On this 26th day of May in the year one thousand nine hundred and seventy-two before me, a Notary Public in and for said County personally appeared LEE R. ALBERT and wife, SARA ALBERT to me known to be the same person s described in and who executed the within instrument, and they severally acknowledged the same to be their free act and deed.

Donna J. Avery, Notary Public, Kent County, Michigan.
My commission expires August 10, 1974

Donald F. Oosterhouse
Attorney at Law
918 Union Bank Building
Grand Rapids, Michigan - 49503

MAIL TAX BILL TO GRANTEE: Same

STATE OF MICHIGAN REAL ESTATE TRANSFER TAX
Dept. MAY 30 $5.50

Kent County Register of Deeds Office

EXHIBIT D

23 AUG 89

78

Cb

QUIT CLAIM DEED—Statutory

LIBER 2660 PG 7

The Grantor(s)
Don R. Craft and wife, Sandra Lee Craft, whose address is 2656 Berwyck Rd., S.E. East Grand Rapids, Michigan
quit-claim(s) to
Sandra Lee Craft
whose address is
2656 Berwyck Rd., S.E. East Grand Rapids, MI
the following described premises situated in the City of Grand Rapids, County of Kent and State of Michigan.
Lot 78, Albert-Realtors Hampshire Replat, as recorded in Liber 55 of Plats, Pages 8 and 9, Kent County, Michigan.

for the sum of $1.00 This conveyance is exempt from transfer tax pursuant to MSA 7.456(5)(L)
Dated this 28th day of August, 19 89

* Edward B. Goodrich

* Diane K. Barr

* Don R. Craft

* Sandra Lee Craft

STATE OF MICHIGAN,
COUNTY OF Kent } ss.

The foregoing instrument was acknowledged before me this 28th day of August, 1989, by Don R. Craft and Sandra Lee Craft.

* Edward B. Goodrich
Notary Public, Kent County, Michigan
EDWARD B. GOODRICH Notary Public, Kent County, MI
My commission expires Dec. 2, 1991

When Recorded Return To:
Edward B. Goodrich
(Name)
600 Waters Building
(Street address)
Grand Rapids, MI 49503
(City and State)

Send Subsequent Tax Bills To:
Sandra Lee Craft
2656 Berwyck Rd., S.E.
Grand Rapid, Michigan
49506

Drafted By:
Edward B. Goodrich
Business Address:
600 Waters Building
Grand Rapids, MI
49503

Tax Parcel #_____ Recording Fee _____ Transfer Tax _____

* TYPE OR PRINT NAMES UNDER SIGNATURES

EXHIBIT
E

668(Y)
(December 1985)

Department of the Treasury / Internal Revenue Service

Notice of Federal Tax Lien Under Internal Revenue Laws

District
DETROIT

Serial Number
L 89006827 3712

For Optional Use by Recording Office

As provided by sections 6321, 6322, and 6323 of the Internal Revenue Code, notice is given that taxes (including interest and penalties) have been assessed against the following-named taxpayer. Demand for payment of the liability has been made, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer DON R CRAFT

Residence
2656 BERWYCK SE
GRAND RAPIDS MI 49506

IMPORTANT RELEASE INFORMATION: With respect to each assessment listed below, unless notice of lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ended (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12/31/79	521-42-0169	07/28/88	08/27/94	166108.26
1040	12/31/80	521-42-0169	07/28/88	08/27/94	86588.76
1040	12/31/81	521-42-0169	07/28/88	08/27/94	41523.23
1040	12/31/82	521-42-0169	12/26/88	01/25/95	61602.70
1040	12/31/83	521-42-0169	07/28/88	08/27/94	20739.93
1040	12/31/84	521-42-0169	07/28/88	08/27/94	32660.62
1040	12/31/85	521-42-0169	07/28/88	08/27/94	31494.93
1040	12/31/87	521-42-0169	07/28/88	08/27/94	10890.97
1040	12/31/87	521-42-0169	06/06/88	07/06/94	2837.33
				Total	$ 482446.73

Place of Filing
KENT CNTY REG OF DEEDS GRAND RAPIDS, MI

This notice was prepared and signed at DETROIT, MICHIGAN, on this,

30 day of MARCH, 19 94

Signature
P. CRICHTON, CD

Title
CHIEF, ADVISORY UNIT

EXHIBIT 1 F

(NOTE: Certificate of officer authorized by law to take acknowledgments is not essential to the validity of Notice of Federal Tax Lien Rev. Rul. 71-466, 1971 - 2 C.B. 409)

Form 668(Y) (Rev. 12-85)

United States Bankruptcy Court — VOLUNTARY PETITION
WESTERN DISTRICT OF MICHIGAN

'NG 92-80551

IN RE
Don R. Craft FEE PAID
ALL OTHER NAMES

SSN/TAX ID.
521-42-0169 521-42-0169
STREET ADDRESS OF DEBTOR
2656 Berwyck Rd SE
Grand Rapids, MI 49506

COUNTY OF RESIDENCE
Kent
MAILING ADDRESS OF DEBTOR
2656 Berwyck Rd SE
Grand Rapids, MI 49506

VENUE
Debtor has had a residence within this district for the preceding 180 days.

INFORMATION REGARDING DEBTOR
Type of debtor: Individual, married, and living together Chapter: 7
Nature of debt: CONSUMER Filing fee: ATTACHED

STATISTICAL INFORMATION
After excluding exempt property and paying administrative expenses, NO funds will be available for distribution to unsecured creditors.
(Estimated figures)

Number of creditors:	8
Assets:	25,609.00
Liabilities:	575,473.03

ATTORNEY NAME AND ADDRESS
Jeff A. Moyer
P44671
600 Waters Bldg.
Grand Rapids, MI 49503

(616) 235-3500
Other Attorneys

COURT USE ONLY

RELIEF ORDERED

EXHIBIT
G

---------- PRIOR BANKRUPTCY CASES FILED WITHIN LAST 6 YEARS ----------

NONE

--- PENDING BANKRUPTCY CASE FILED BY SPOUSE, PARTNER, OR AFFILIATE ---

NONE

---------- REQUEST FOR RELIEF ----------

Debtor requests relief in accordance with the chapter of title 11 United States Code specified in this petition.

---------- SIGNATURES ----------

Jeff A. Moyer
P44671

Date: 1/30/92

I declare under penalty of perjury that the information provided in this petition is true and correct.

Don R. Craft

Date: 1/30/92

I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under such chapter, and choose to proceed under chapter 7 of such title.

Exhibit B has been completed.

Don R. Craft

Date: 1/30/92

---------- EXHIBIT B ----------

I, the attorney for the debtor in the foregoing petition, declare that I have informed the debtor that the debtor may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under such chapter.

Jeff A. Moyer
P44671

Date: 1/30/92

[EXHIBIT H]

P.O. Box 3310
Grand Rapids, MI 49501

Western District of Michigan

Case Number: 92-80551 DEN

Jeff A. Moyer
161 Ottawa, NW
Suite 600
Grand Rapids, MI 49503

IN RE:
Don R. Craft, 521-42-0169

DISCHARGE OF DEBTOR

It appearing that a petition commencing a case under title 11, United States code, was filed by or against the person named above on 01/30/92, and that an order for relief was entered under chapter 7, and that no complaint objecting to the discharge of the debtor was filed within the time fixed by the court [or that a complaint objecting to discharge of the debtor was filed and, after due notice and hearing, was not sustained];

IT IS ORDERED that

1. The above-named debtor is released from all dischargeable debts.

2. Any judgment heretofore or hereafter obtained in any court other than this court is null and void as a determination of the personal liability of the debtor with respect to any of the following:

(a) debts dischargeable under 11 U.S.C. Sec. 523;

(b) unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clauses (2), (4) and (6) of 11 U.S.C. Sec. 523(a);

(c) debts determined by this court to be discharged.

3. All creditors whose debts are discharged by this order and all creditors whose judgments are declared null and void by paragraph 2 above are enjoined from instituting or continuing any action or employing any process or engaging in any act to collect such debts as personal liabilities of the above-named debtor.

Dated: 06/01/92 BY THE COURT

Hon. David E. Nims, Jr.
United States Bankruptcy Judge

[EXHIBIT I]

UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF MICHIGAN

Case No. NG92-80551

IN RE DON R. CRAFT, DEBTOR(S)

NOTICE TO CREDITORS AND OTHER PARTIES IN INTEREST

Notice is given that a hearing will be held before the Hon. David E. Nims, Jr. at the U.S. Bankruptcy Court, Room 740 Federal Building, 110 Michigan, N.W., Grand Rapids, MI, at 10:00 A.M. ON FRIDAY, SEPTEMBER 18, 1992 to consider and act upon the following matter:

DEBTOR'S MOTION TO REOPEN CHAPTER 7 BANKRUPTCY ESTATE

Notice & Motion returned to Jeff A. Moyer, Esq. on August 18, 1992 for service of notice & motion upon all creditors on the court's mailing matrix. (kah)

[Seal Omitted]

August 18, 1992-kah
Date

MARK VAN ALLSBURG
CLERK OF BANKRUPTCY COURT

COPY
By: Sandra L. Boylan, Deputy Clerk

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

Case No. NG 92-80551
Chapter 7
Hon. David E. Nims, Jr.

IN RE DON R. CRAFT, DEBTOR

[Received: Aug. 14, 1992]

MOTION TO RE-OPEN BANKRUPTCY ESTATE

NOW COMES Don R. Craft, by and through his attorneys, Rhoades, McKee, Boer, Goodrich & Titta, and moves this Court to re-open the above-captioned Chapter 7 Bankruptcy under provisions of 11 U.S.C. § 350(b) to accord relief to the Debtor with respect to avoiding a Federal tax lien, determining that the Federal tax debt involved has been discharged and for injunctive relief against the continuing collection actions by the Internal Revenue Service. In support of his motion to re-open the Bankruptcy case, the Debtor states as follows:

1. The Debtor filed a Chapter 7 Bankruptcy Petition with this Court on January 30, 1992.

2. The Internal Revenue Service was listed as both a priority and general unsecured creditor for unpaid 1040 and 941 tax liabilities for the period of 1979 through and including 1991.

3. The Debtor was discharged by Order of this Court dated June 1, 1992.

4. The above-captioned Bankruptcy case was closed on June 11, 1992.

5. The Internal Revenue Service has continued to attempt collection of debts previously discharged by the Debtor's Chapter 7 Bankruptcy Petition.

6. The Debtor requests the above-captioned Bankruptcy case be re-opened under provisions of § 350(b) to accord relief to the Debtor having to do with the extent of his discharge and for other cause.

7. The Debtor further requests the fee to re-open this Bankruptcy be waived by the Bankruptcy Court since this Motion and the accompanying Adversary Complaint are both being filed seeking to enforce the terms of the Debtor's discharge.

NOW WHEREFORE, Don R. Craft, Debtor, prays this Court to re-open this Bankruptcy case to allow the appropriate actions to be filed to determine conclusively whether the listed tax debt was discharged, whether the Federal tax lien filed by the Internal Revenue Service was valid and to seek this Court's enforcement of the injunctive powers contained within provisions of § 524(a)(2) and (3).

Respectfully submitted,

Dated: August 14, 1992

RHOADES, MCKEE, BOER,
GOODRICH & TITTA

By: JEFF A. MOYER
JEFF A. MOYER (P44671)
Attorneys for Don R. Craft
Business address:
600 Waters Building
Grand Rapids, MI 49503
(616) 235-3500

[EXHIBIT J]

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

Case No. NG 92-80551
Chapter 7
Hon. David E. Nims, JR.

IN RE DON R. CRAFT, DEBTOR

[Oct. 7, 1992]

ORDER RE-OPENING CASE

At a session of said Court of Bankruptcy held in the Federal Building, in Grand Rapids, Michigan, on September 18, 1992.

PRESENT: HONORABLE DAVID E. NIMS, JR.
United States Bankruptcy Judge

The Debtor having moved this Court to re-open his Chapter 7 Bankruptcy to accord certain relief; the Court having reviewed the pleadings and the Court's file; and the Court being otherwise duly apprised; the Court having ordered this Case re-opened from the bench at a session of open court on September 18, 1992;

IT IS SO ORDERED.

[Illegible]
Hon. David E. Nims, Jr.
United States Bankruptcy Judge

Examined, Countersigned & Entered

Attest: A True Copy

Deputy County Clerk

Deputy County Clerk

Return for service to:
Jeff A. Moyer
RHOADES, MCKEE, BOER,
GOODRICH & TITTA
600 Waters Building
Grand Rapids, MI 49503
(616) 235-3500

[EXHIBIT K]

United States Bankruptcy Court

WESTERN District of MICHIGAN

[ADVERSARY PROCEEDING
NO. 92 8542]

In re Bankruptcy Case No. NG 92-80551

DON R. CRAFT, **Debtor**

DON R. CRAFT and SANDRA L. CRAFT, **Plaintiff**

INTERNAL REVENUE SERVICE, **Defendant**

SUMMONS AND NOTICE OF PRETRIAL CONFERENCE IN AN ADVERSARY PROCEEDING

YOU ARE SUMMONED and required to submit a motion or answer to the complaint which is attached to this summons to the clerk of the bankruptcy court within 30 days after the date of issuance of this summons, except that the United States and its offices and agencies shall submit a motion or answer to the complaint within 35 days.

Address of Clerk
Mark Van Allsburg, Clerk of Court U.S. Bankruptcy Court Post Office Box 3310 Grand Rapids MI 49501

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

Name and Address of Plaintiff's Attorney
Jeff A. Moyer (P44671) 600 Waters Building Grand Rapids, MI 49503

If you make a motion, your time to answer is governed by Bankruptcy Rule 7012.

YOU ARE NOTIFIED that a pretrial conference of the proceeding commenced by the filing of the complaint will be held at the following time and place.

Address	~~Room~~
United States Bankruptcy Court 7th Floor, Federal Building 110 Michigan, N.W. GRAND RAPIDS MICHIGAN	11:00 A.M. Date and Time Tuesday/ Dec. 22, 1992

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

MARK VAN ALLSBURG,
Clerk of the Bankruptcy Court

10-14-92 dgs — By: DAVID G. SCALICI
Date — *Deputy Clerk*

David G. Scalici

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

Case No. GG 92-80551
Chapter 7
HON. JAMES D. GREGG

IN RE DON R. CRAFT, DEBTOR

DON R. CRAFT AND SANDRA L. CRAFT, PLAINTIFFS

vs.

INTERNAL REVENUE SERVICE, DEFENDANT

[ADVERSARY PROCEEDING NO.
92 8542
ALL DOCUMETS REGARDING THIS
MATTER MUST BE IDENTIFIED BY
BOTH ADVERSARY AND DEBTOR
CASE NUMBERS]

[Received: AUG. 14, 1992 PM 4:27]

COMPLAINT TO DETERMINE DISCHARGEABILITY, VALIDITY OF FEDERAL TAX LIENS, AND ENFORCEMENT OF POST-DISCHARGE INJUNCTION

NOW COMES Don R. Craft ("Debtor") and Sandra L. Craft, by and through their attorneys Rhoades, McKee, Boer, Goodrich & Titta, and for their Complaint state as follows:

1. This Complaint is to determine if certain indebtedness asserted by the Internal Revenue Service ("IRS") against the Debtor has been discharged, to determine the validity of the Federal tax liens filed by the IRS, and to enforce the injunctive provisions of 11 U.S.C. § 524(a)(2) and (3) against the IRS. This Complaint is filed pursuant to Federal Rule of Bankruptcy Procedure 7001(2), (6), (7) and (9).

2. This Court has jurisdiction in this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 since this proceeding arises in the above-captioned Chapter 7 case which was heard before this Court. This adversary proceeding is a core proceeding under 28 U.S.C. § 157(b)(2)(C), (I), (K) and (O).

3. Don Craft was a Michigan resident formerly residing at 2656 Berwyck Road, S.E., Grand Rapids, Michigan 49506 at the time this Chapter 7 petition was filed and for a period in excess of 180 days prior to filing. Sandra L. Craft is the non-debtor spouse who resides with the Debtor.

4. The Defendant is an instrumentality of the United States government charged with the responsibility of collection and enforcement under various Federal taxation statutes. The Defendant's local representative in the office of District Director is Mr. Paul J. Papsun who performs duties for the IRS as an agent at the Department of Treasury, 477 Michigan Avenue, Detroit, Michigan 48226.

5. Don R. Craft filed a Chapter 7 petition with this Court on January 30, 1992.

6. The IRS was listed on Schedule E of the Debtor's Chapter 7 petition as a priority creditor in the amount of $10,300 for unpaid 1040 liability for years

1988 through 1991 and also an undetermined amount of unpaid "trust fund" liability arising out of unpaid 941 taxes for the years 1979 through 1991.

7. The IRS was further listed on Schedule F as an unsecured creditor in the amount of $509,271.71 for unpaid 1040 tax liability for tax years 1979 through and including 1987 after determining that the provisions of § 507(a)(7), § 503(b)(1)(B) and § 523(a)(1) were not applicable.

8. The petition, schedules and matrix on file with the Court reflect appropriate notice to the IRS and the Debtor's schedules further provide record notice to the IRS of the treatment of their claim by the Debtor's bankruptcy petition.

9. Don R. Craft, Debtor, was discharged by Order of this Court signed on June 1, 1992.

10. The IRS did not at any time file any motion, request for hearing or adversary proceeding before this Court concerning the above-captioned bankruptcy case to assert that the treatment of its claims were incorrect or that the debts should not be discharged.

11. The IRS filed a Notice of Federal Tax Lien (Form 668(Y)) with the Kent County Register of Deeds against the Debtor for a residence listed at 2656 Berwyck, S.E., Grand Rapids, Michigan 49506 on March 30, 1989. See Exhibit A.

12. At the time the Federal tax lien was recorded against the interest of the Debtor in the house located on 2656 Berwyck, this home was owned by the Debtor and his non-debtor spouse as tenancy by the entireties property. See Exhibit B.

13. Under the current and controlling case law within the Sixth Circuit as it determined the application of Michigan law, a Federal tax lien against the husband only does not attach to any home owned by the husband and wife by tenancy by the entireties. *United States v. Certain Real Property Located at 2525 LeRoy Lane, West Bloomfield, Michigan*, 910 F.2d 343, 350 (6th Cir. 1990); *Cole v. Cardoza*, 441 F.2d 1337, 1343 (6th Cir. 1971). The *Cardoza* Court went on to state that a Federal tax lien against a husband only constituted a cloud upon the title to a Michigan home owned by the husband and wife as tenancy by the entireties property and that the husband and wife were entitled to have the Federal tax lien declared a nullity as to their home. That Court went on to order the county register of deeds to declare the Federal tax lien filed to be null and void as to that property. *Cardoza*, 441 F.2d at 1344.

14. The IRS has been informed on several occasions that this factual situation exists and that their Federal tax lien could not have legally attached. Counsel for the Debtor has further requested that the IRS provide a "*Cardoza*" letter to serve as a release to any title company for the Federal tax lien filed against the subject property. See Exhibits C, D, and E.

15. The IRS has continued and persisted in refusing to acknowledge the invalidity of their lien, release their lien as filed against this home and has continued to seek enforcement of this discharged debt in violation of the provisions of § 524(a)(2) and (3). See Exhibit F.

WHEREFORE, Don R. Craft and Sandra L. Craft request this Court to determine that (a) the entire debt which is the subject of the Federal tax lien filed on March 30, 1989 has been discharged; (b) said Federal

tax lien was a nullity and did not attach to the marital home owned by the Debtor and his non-debtor spouse as tenancy by the entireties' property at the time the lien was filed; (c) that said tax lien should be ordered by this Court to be removed from the title by the register of deeds for Kent County as being null and void; and (d) that the IRS be hereafter permanently enjoined from any and all continuations or commencements of actions or processes to collect, recover or enforce this discharged debt against the Debtor.

Dated: August 13, 1992

RHOADES, MCKEE, BOER,
GOODRICH & TITTA
Attorneys for Don R. Craft
and Sandra L. Craft

By: JEFF MOYER
JEFF A. MOYER (P44671)
Edward B. Goodrich
(P14176)
Peter A. Titta (P21476)
Business address:
600 Waters Building
Grand Rapids, MI 49503
(616) 235-3500

Form 668(Y)
(Rev. December 1989)

Department of the Treasury - Internal Revenue Service

Notice of Federal Tax Lien Under Internal Revenue Laws

District	Serial Number	For Optional Use by Recording Office
DETROIT	69006927 [illegible]	

As provided by sections 6321, 6322, and 6323 of the Internal Revenue Code, notice is given that taxes (including interest and penalties) have been assessed against the following-named taxpayer. Demand for payment of this liability has been made, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer [illegible]N A CRAFT

Residence

[illegible]058 BERWYCK SE
[illegible] RAPIDS MI [illegible]

IMPORTANT RELEASE INFORMATION: With respect to each assessment listed below, unless notice of lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ended (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12/31/79	521-42-0169	07/28/80	[illegible]/27/94	[illegible]108.26
1040	12/31/80	521-42-0169	07/28/80	[illegible]/27/94	[illegible]598.76
1040	12/31/81	521-42-0169	07/28/80	[illegible]/27/94	[illegible]723.35
1040	12/31/82	521-42-0169	11/26/88	[illegible]/25/95	1602.70
1040	12/31/83	521-42-0169	07/28/86	[illegible]/27/94	[illegible]07 9.5[illegible]
1040	12/31/84	521-42-0169	07/28/80	[illegible]/27/94	[illegible]1003.62
1040	12/31/85	521-42-0169	07/28/80	[illegible]/27/94	[illegible]474.93
1040	12/31/87	521-42-0169	07/26/88	06/27/94	890.97
1040	12/31/87	521-42-0169	06/06/88	[illegible]/06/94	2837.33

Place of Filing

[illegible] Total $ 482446.73

KENT CNTY REG OF DEEDS GRAND RAPIDS, MI

This notice was prepared and signed at DETROIT, MICHIGAN, on this,

the 30 day of MARCH, 19 89

EXHIBIT A

Signature E. P. Erickson CD

Title CHIEF, ADVISORY UNIT

(NOTE: Certificate of officer authorized by law to take acknowledgments is not essential to the validity of Notice of Federal Rev. Rul. 71-466, 1971 - 2 C.B. 409)

Form 668(Y) (Rev. 12-89)

96

COUNTY TREASURER'S
TAX CERTIFICATE OF SALE OR DEED
DATED

Liber 2129 Page 1186

This Indenture, made this 16th day of May in the year one thousand nine hundred and seventy-two

between LEE R. ALBERT and wife, SARA ALBERT
2748 Berwyck Rd., S.E., Grand Rapids, Michigan

parties of the first part

AND DON R. CRAFT and wife, SANDRA LEE CRAFT
of 2856 Berwyck Rd., S.E., East Grand Rapids, Michigan
(Mailing Address)

husband and wife as tenants by the entirety, parties of the second part.

Witnesseth, That the said part ies of the first part, for and in consideration of the sum of:

Forty-eight Thousand and No/100ths (48,000.00) Dollars,

to them in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, do by these presents, grant, bargain, sell, remise, release, alien and confirm unto the said parties of the second part, and their heirs and assigns or grantees, FOREVER, all that certain piece or parcel of land situate and being in the City of East Grand Rapids County of Kent, and State of Michigan, and described as follows, to-wit:

Lot 78, Albert-Realtors Hampshire Replat, as recorded in Liber 55 of Plats, Pages 8 and 9, Kent County, Michigan.

Tax Certificate as required by Sec. 135, Act No. 134, Public Acts of 1893 duly presented

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining: To Have and To Hold the said premises, as herein described, with the appurtenances, unto the said parties of the second part, and to their assigns, and the survivor of the parties of the second part, his or her heirs or assigns, FOREVER. And the said LEE R. ALBERT and wife, SARA ALBERT for themselves, their heirs, executors, and administrators, do covenant, grant, bargain and agree to and with the parties of the second part, their assigns, and the survivor of the parties of the second part, his or her heirs or assigns, that at the time of the ensealing and delivery of these presents they are well seized of the above granted premises in Fee Simple, and that they have good right to bargain and sell the same in manner and form aforesaid.

and that they will and their heirs, executors, and administrators shall Warrant and Defend the said premises against all lawful claims whatsoever.

In Witness Whereof, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in presence of

Lee R. Albert

Hyman H. Rosen

Sara Albert

Donna J. Avery

STATE OF MICHIGAN, } ss.
County of KENT

On this 16th day of May in the year one thousand nine hundred and seventy-two before me, a Notary Public in and for said County personally appeared LEE R. ALBERT and wife, SARA ALBERT to me known to be the same persons described in and who executed the within instrument, who acknowledged the same to be their free act and deed.

Donna J. Avery
Notary Public
Kent County, Michigan
My commission expires August 16, 1974

* NAME OF PERSON WHO DRAFTED THIS INSTRUMENT
Donald F. Osterhouse
ADDRESS
810 Union Bank Building
Grand Rapids, Michigan 49503

When Recorded Return to Drafter

When Recorded Mail Tax Statements to

STATE OF MICHIGAN REAL ESTATE TRANSFER TAX
Dept. MAY 30 '72 $52.80

Kent County Register of Deeds Office

Kent County Register of Deeds Office

EXHIBIT B

97

[EXHIBIT C]

RHOADES, MCKEE, BOER, GOODRICH & TITTA
ATTORNEYS AT LAW

161 OTTAWA AVENUE N.W., SUITE 600
GRAND RAPIDS, MICHIGAN 49503-2793
TELEPHONE (616) 235-3500
FAX (616) 459-5102

OF COUNSEL
JEAN MCKEE
CHARLES T. ZIMMERMAN
ROBERT F. WILLIAMS
ROBERT J. DE BOER

AFFILIATED OFFICES
DE FRANCESCO & DE FRANCESCO
ST. JOSEPH, MI & NEW BUFFALO, MI

[NAMES OMITTED]

May 26, 1992

Mr. Paul Patsun
Special Procedures
IRS Advisory Unit 1
Stop 47
477 Michigan Ave.
Detroit, MI 48226

In Re: Federal Tax Lien: Donald Craft, 2656 Berwyck, East Grand Rapids, Michigan

Dear Mr. Patsun:

We are the attorneys for the Seller of the real estate located at 2656 Berwyck.

A title search related to the sale has disclosed a Notice of Federal Tax Lien dated March 30, 1989 and recorded April 7, 1989, in Liber 2613 at Page 232, was filed against Donald Craft. A copy of the lien is attached. At the time the lien was recorded, the real estate was owned by the taxpayer, Mr. Donald Craft and his spouse, Sandra Lee Craft, as tenants by the entirety. A copy of the deed is attached. Mr. Craft deeded his interest in the property to Sandra Lee Craft on August 28, 1989, by deed recorded in Liber 2660 at Page 7 on August 29, 1989. A copy of the deed is attached.

We have been requested by the title insurance company to obtain a "Cardoza" letter from your office indicating that the lien against Mr. Craft, individually, has no validity as to the property owned as tenants by the entirety. *Cole v. Cardoza*, 441 F.2d 1337 (6th Cir. 1971).

Would you please provide such verification as to Mr. Craft.

Very truly yours,

/s/ PETER A. TITTA
PETER A. TITTA

PAT: ab

cc: Mr. Donald Craft
Transamerica Title
Ms. Sue Allen, Fletcher Realty

[EXHIBIT D]

RHOADES, MCKEE, BOER, GOODRICH & TITTA
ATTORNEYS AT LAW

161 OTTAWA AVENUE N.W., SUITE 600
GRAND RAPIDS, MICHIGAN 49503-2793
TELEPHONE (616) 235-3500
FAX (616) 459-5102

OF COUNSEL
JEAN MCKEE
CHARLES T. ZIMMERMAN
ROBERT F. WILLIAMS
ROBERT J. DE BOER

AFFILIATED OFFICES
DE FRANCESCO & DE FRANCESCO
ST. JOSEPH, MI & NEW BUFFALO, MI

[NAMES OMITTED]

Second Request – June 11, 1992

May 26, 1992

Mr. Paul Patsun
Special Procedures
IRS Advisory Unit 1
Stop 47
477 Michigan Ave.
Detroit, MI 48226

In Re: Federal Tax Lien: Donald Craft, 2656 Berwyck, East Grand Rapids, Michigan

Dear Mr. Patsun:

We are the attorneys for the Seller of the real estate located at 2656 Berwyck.

A title search related to the sale has disclosed a Notice of Federal Tax Lien dated March 30, 1989 and recorded April 7, 1989, in Liber 2613 at Page 232, was filed against Donald Craft. A copy of the lien is attached. At the time the lien was recorded, the real estate was owned by the taxpayer, Mr. Donald Craft and his spouse, Sandra Lee Craft, as tenants by the entirety. A copy of the deed is attached. Mr. Craft deeded his interest in the property to Sandra Lee Craft on August 28, 1989, by deed recorded in Liber 2660 at Page 7 on August 29, 1989. A copy of the deed is attached.

We have been requested by the title insurance company to obtain a "Cardoza" letter from your office indicating that the lien against Mr. Craft, individually, has no validity as to the property owned as tenants by the entirety. *Cole v. Cardoza*, 441 F.2d 1337 (6th Cir. 1971).

Would you please provide such verification as to Mr. Craft.

Very truly yours,

/s/ PETER A. TITTA
PETER A. TITTA

PAT: ab

cc: Mr. Donald Craft
Transamerica Title
Ms. Sue Allen, Fletcher Realty

[EXHIBIT E]

RHOADES, MCKEE, BOER, GOODRICH & TITTA
ATTORNEYS AT LAW

161 OTTAWA AVENUE N.W., SUITE 600
GRAND RAPIDS, MICHIGAN 49503-2793
TELEPHONE (616) 235-3500
FAX (616) 459-5102

OF COUNSEL
JEAN MCKEE
CHARLES T. ZIMMERMAN
ROBERT F. WILLIAMS
ROBERT J. DE BOER

AFFILIATED OFFICES
DE FRANCESCO & DE FRANCESCO
ST. JOSEPH, MI & NEW BUFFALO, MI

[NAMES OMITTED]

July 15, 1992

Internal Revenue Service
Attn: Paul J. Papsun
477 Michigan Avenue
Detroit, MI 48[illegible]6

RE: Request for a Certificate of Discharge –
Donald Craft
Refer Reply to: PJP
Our File No.: 37084-1

Dear Mr. Papsun:

Enclosed are the following documents which I am submitting to your office with regard to the request for a Certificate of Discharge – Donald Craft:

1. Copy of purchase deed;
2. Copy of Quit Claim Deed from Mr. and Mrs. Craft to Mrs. Craft dated August 28, 1989, and recorded August 29, 1989, at Liber 2660, Page 7;
3. Printouts from NBD showing mortgage payments made and monthly payment;
4. Copy of St. Mary's Hospital Credit Union statements showing payment of the $273.50 monthly mortgage amount;
5. Copy of signature card establishing that Donald Craft did not have control over St. Mary's Account dated 2/23/92;
6. Copy of Sandra Craft 1040 Schedule A showing she paid all mortgage payments and taxes on the property; and,
7. Copy of bankruptcy court decree discharging all debts, which included federal taxes, of Mr. Donald Craft.

These are furnished in response to the issue of whether Mrs. Craft was actually paying the mortgage or acted as a nominee on behalf of Mr. Craft.

Very truly yours,

/s/ PETER A. TITTA
PETER A. TITTA

PAT: ka
cc: Sandra Craft
Enclosures

[EXHIBIT F]

Internal Revenue Service
District Director

Department of Treasury
477 Michigan Avenue
Detroit, Michigan 48226

Person to Contact:
Paul J. Papsun
Telephone Number:
(313) 226-7157
Refer Reply to:
PJP
Date: June 15, 1992

Peter Titta
Attorney At Law
161 Ottawa Avenue N.W. #600
Grand Rapids, Michigan
49503-2793

Re: Request for a Certificate of Discharge-Donald Craft

Dear Mr. Titta:

I have received and reviewed the above request for a Cole v. Cardoza letter for property located at 2656 Berwyck. Per our conversation on June 15, 1992, the IRS would issue a COLE Letter on this property if the IRS receives all payments made to the mortgage from September 1, 1989 to the present. In addition, Mr. Craft would have to quit claim the property back to both him and his wife (as it correctly should be). If you wish to follow this course of action, please resubmit your application with the with a COPY of this LETTER and the following:

1. Copy of purchase deed.
2. Copy of original quit claim deed.
3. Copy of quit claim deed to correct.
4. Letter from bank as to the amount of each monthly payments for this specific piece of property.

5. Copy of the federal tax lien.
6. Certified check in the amount of those payments.
7. Please sign your application under penalties of perjury.

If you wish not to follow this course of action, your alternative would be to file a quiet title action joining the Internal Revenue Service.

At this time your case has been closed. Thank you for your inquiry and we hope that your questions have been answered.

Sincerely,

/s/ ELIZABETH J. PATINO
ELIZABETH J. PATINO
Chief, S.P.B. Advisory Unit

B 104
(Rev. 8/87)

ADVERSARY PROCEEDING COVER SHEET
(Instructions on Reverse)

ADVERSARY PROCEEDING NUMBER (Court Use Only)
92 8542

PLAINTIFFS	DEFENDANTS
DON R. CRAFT and SANDRA L. CRAFT	INTERNAL REVENUE SERVICE
ATTORNEYS (Firm Name, Address, and Telephone No.) Jeff A. Moyer (P44671) 600 Waters Building Grand Rapids, Michigan 49503 (616) 235-3500	**ATTORNEYS** (If Known) Terry Zabel 678 Front Street Grand Rapids, Michigan 49504

RECEIVED
92 AUG 14 PM 4:27
CLERK, U.S. BKPTCY COURT
WESTERN DIST OF MICH

PARTY (Check one box only) ☒ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☐ 3 U.S. NOT A PARTY

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

IRS has continued collection efforts on discharged debt in violation of 11 U.S.C. §524(a). IRS is attempting to enforce invalid tax lien. 11 U.S.C.

NATURE OF SUIT
(Check the one most appropriate box only.)

- ☐ 454 To Recover Money or Property
- ☒ 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property
- ☐ 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property
- ☐ 424 To object or to revoke a discharge 11 U.S.C. §727
- ☐ 456 To revoke an order of confirmation of a Chap. 11 or Chap. 13 Plan
- ☐ 426 To determine the dischargeability of a debt 11 U.S.C. §523
- ☐ 434 To obtain an injunction or other equitable relief
- ☐ 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan
- ☐ 456 To obtain a declaratory judgment relating to any of foregoing causes of action
- ☐ 459 To determine a claim or cause of action removed to a bankruptcy court
- ☐ 498 Other (specify)

ORIGIN OF PROCEEDINGS (Check one box only.) ☒ 1 Original Proceeding ☐ 2 Removed Proceeding ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another Bankruptcy Court ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $ 510 (NEAREST THOUSAND) OTHER RELIEF SOUGHT: Enforcement of Permanent Injunction ☐ JURY DEMAND

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES

NAME OF DEBTOR: Don R. Craft
BANKRUPTCY CASE NO.: NG 92-80551
DISTRICT IN WHICH CASE IS PENDING: Western District of Michigan
DIVISIONAL OFFICE:
NAME OF JUDGE: David E. Nims, Jr.

RELATED ADVERSARY PROCEEDING (IF ANY)

PLAINTIFF:
DEFENDANT:
ADVERSARY PROCEEDING NO.:
DISTRICT:
DIVISIONAL OFFICE:
NAME OF JUDGE:

FILING FEE (Check one box only.) ☒ FEE ATTACHED ☐ FEE NOT REQUIRED ☐ FEE IS DEFERRED

DATE: August 13, 1992
PRINT NAME: Jeff A. Moyer
SIGNATURE OF ATTORNEY (OR PLAINTIFF): [signature]

[EXHIBIT L]

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

Case No. NG 92-80551
Adversary Proceeding No. 92-8542
Chapter 7
HON. JAMES D. GREGG

IN RE: DON R. CRAFT, DEBTOR

DON R. CRAFT AND SANDRA L. CRAFT, PLAINTIFFS

vs.

INTERNAL REVENUE SERVICE, DEFENDANT

[Filed Jan. 25, 1993]

CONSENT JUDGMENT AND WITHDRAWAL OF ADVERSARY PROCEEDING

The undersigned parties appearing through counsel in the above-captioned Adversary Proceeding before this Court have consented to the entry of a Judgment by this Court and the withdrawal of this adversary proceeding upon the entry of that Judgment under the following terms:

1. The Debtor, Mr. Don R. Craft, is deemed to be discharged of all further personal liability to the Internal Revenue Service for liabilities arising out of 1040 tax returns for the period 1979 through and

including 1991 with the following exceptions: Priority taxes in the amount of $10,300 representing liabilities for the years 1988 through 1991, and the secured amount of $2,109 representing the value of the personal property to which the IRS [2] tax lien attached are not discharged. All remaining personal liability of Don R. Craft to the Internal Revenue Service based on the 1040 tax liability for those years is discharged under provisions of 11 U.S.C. § 727(b).

2. Upon entry of this Judgment, the Debtor agrees to withdraw this adversary proceeding against the Internal Revenue Service forthwith.

Dated: January 21, 1993 By: TERRY ZABEL
TERRY ZABEL, District
Counsel
Internal Revenue Service

Dated: January 21, 1993 By: JEFF MOYER
JEFF A. MOYER (P44671)
Attorneys for Don and
Sandra Craft

ORDER

At a session of said Court of Bankruptcy held in the Federal Building, in Grand Rapids, Michigan, on JAN 27, 1993.

PRESENT: HONORABLE JAMES D. GREGG
United States Bankruptcy Judge

The above-captioned Bankruptcy having been filed on January 30, 1992; the Debtor having received his discharge by Order of this Court dated June 1, 1992; the Debtor having filed a Motion to Reopen this Bank-

ruptcy seeking relief against the Internal Revenue Service on August 14, 1992; the Debtor having filed an Adversary Complaint to determine the dischargeability, the validity of Federal Tax Liens and to enforce post-discharge injunction on August 14, 1992; the Court having reviewed and accepted the [3] Stipulation of Facts as between these two parties; the Court having reviewed the above Consent Judgment and being otherwise duly advised on the premises:

IT IS SO ORDERED.

Dated: January ___, 1993 /s/ JAMES D. GREGG
U.S. Bankruptcy
Judge